



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

Appeal Number: AA/02934/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 31 October 2014**

**Determination
Promulgated
On 14 January 2015**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

**EB
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Bayati, Counsel instructed by A & P Solicitors

For the Respondent: Ms L Kenny, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal comes before me following a hearing in the Upper Tribunal on 26 June 2014 whereby I found an error of law in the decision of the First-tier Tribunal such that the decision was set aside, to be re-made in the Upper Tribunal.
2. Attached as an Annex to this determination is the error of law decision described as a "Decision and Directions". It is nevertheless convenient to quote from the opening paragraphs of that decision at this point in order

to describe the background to the appeal and the facts upon which it is based. In the error of law decision I said as follows:

- “1. The appellant is a citizen of Sri Lanka, born on 6 May 1988. He arrived in the UK on 4 September 2010 with a valid student visa. He was detained by immigration authorities on 8 March 2013 on the basis that he was working in breach of the restrictions on his employment. Ultimately, the appellant claimed asylum. That claim was refused and a decision made on 2 May 2014 to remove him to Sri Lanka.
2. His appeal against that decision was dismissed by First-tier Tribunal Judge Froom after a hearing on 2 June 2014, the hearing having commenced and been adjourned on 15 May 2014. Permission to appeal against Judge Froom’s decision was granted on 18 June 2014.
3. The basis of the appellant's claim, in summary, is that he had been a member of the Tamil Students’ Union and had attended a number of student demonstrations until he left Jaffna in 2007. Before that he had assisted the LTTE by transporting parcels on his bicycle. He ceased those activities in 2006. He did other work for the LTTE when he went to Colombo.
4. Between 2008 and 2010 he worked as a journalist on a voluntary basis, writing articles critical of the human rights record of the government, under a pseudonym. However, other articles that he wrote were related to student activities and were not critical of the government.
5. He says that he was arrested on 2 August 2010 at a checkpoint, being told that he was suspected of being a terrorist. He was detained for eight days and ill-treated during his detention. He was released on payment of a bribe by his father.
6. Judge Froom rejected the appellant’s claim that he had ever been the subject of adverse attention by the authorities, concluding that it was not reasonably likely that he had been detained in 2010.
7. He accepted that the appellant had worked as a volunteer journalist, and that he had, under a pseudonym, written articles that criticised the human rights record of the government. However, he found that the authorities had not discovered that he was the author of those articles and nor would they on his return to Sri Lanka. Although he accepted that the appellant is a person who holds sincere political views adverse to the government, he concluded that he was not reasonably likely to bring himself to the attention of the authorities by writing further articles.
8. He accepted that the appellant had taken part in meetings and demonstrations in the UK in support of Tamils, as referred to in his witness statement at [16], but found that those activities were not reasonably likely to lead to his being identified as being involved in those activities by the authorities. Thus, he would not be at risk for that reason on return to Sri Lanka.”

3. As can be seen from the error of law decision, this appeal started life as a fast track appeal. On 29 June 2014, as well as setting aside the decision of the First-tier Tribunal for error of law, I decided that the appeal should no longer be subject to the fast track procedure. Amongst other directions, I directed that the findings of fact made by the First-tier Tribunal, except insofar as any such findings are infected by error of law, were to stand.
4. First-tier Tribunal Judge Froom made the following findings, these being findings that are preserved:
 - The appellant is a Tamil from Jaffna.
 - The appellant was a member of the North Sri Lanka Journalist Association (“NSJA”) between April 2008 and August 2010 as a media worker for Tamil Media. He was assigned to provide IT training for Tamil Media personnel and to oversee the computer systems, maintenance, IT security and networking.
 - The appellant worked with Pathivu Online Tamil Media as a reporter.
 - The appellant was an employee of Pathivu Online and worked as a news reporter from January 2008 until August 2010. He worked for that organisation under the pseudonym “Veeraputhirar”. He was a volunteer for that organisation.
 - The appellant wrote articles more as a hobby than as a profession.
 - The appellant attends Tamil meetings and demonstrations in the UK on a regular basis. This is consistent with his holding strong views about the Tamil struggle for independence.
 - The appellant gave a truthful account of writing articles in Tamil media under a pseudonym.
 - The appellant is a person who holds sincere political opinions adverse to the Government of Sri Lanka.

Submissions

5. On behalf of the respondent, accepting that certain findings of fact are to stand, it was submitted that the key question is whether there would be a link between the appellant’s real name and his pseudonym. The evidence that he used both names in writing articles was only his oral evidence. The articles do not show what email address was given. It is surprising that he was able to produce copies of documents sent under his pseudonym but not those under his own name. Accordingly, it was submitted that limited weight should be given to his oral evidence on that issue. It is also to be borne in mind that he was not found entirely credible

by the First-tier Judge, for example in terms of his detention. There is therefore, no indication that the appellant is being sought in Sri Lanka. There is no evidence that anyone has approached the family or made enquiries as to his whereabouts. He has not yet therefore come to the attention of the authorities.

6. It is also relevant to bear in mind that he was able to leave legally using his own passport. He left Sri Lanka in 2010 and has not since been active in terms of journalistic activities.
7. He had delayed claiming asylum and had resisted removal on two occasions. He had claimed asylum as a last resort and these are not the actions of someone genuinely in fear.
8. The organisation Pathivu had now been blocked. It was not therefore established to the lower standard that there would be any link made between him and any articles he had written critical of the government. So far as pages 231-245 of the appellant's bundle are concerned, these were written about five and a half years ago. Although they do have his name on them, his claim previously was that there would be a risk to him because of a link made with his email address rather than because the articles in his name are critical of the government.
9. Ms Bayati relied on the skeleton argument. She submitted that it had always been his claim that he was a journalist in Sri Lanka and had written articles for various organisations including Pathivu.
10. However, bearing in mind that his appeal was part of the fast track process, the articles he produced at that time were those which used his pseudonym. This can be seen from [39] of Judge Froom's determination and from which it can also be seen that a question arose as to whether the appellant had mentioned in his interview that he wrote articles under a pseudonym. The letter from Pathivu at page 3 of the appellant's original bundle does not state that he only wrote under a pseudonym. The further material from page 231 of the updated bundle indicates that he also wrote articles under his real name. To that extent the "understanding" of his case has evolved.
11. Thus, there are articles under his real name as well as under his pseudonym. The 'new' articles relied on were written for Pathivu which was blocked in May 2014. This can be seen from, for example, page 52 of the appellant's original bundle, being a news report referring to the blocking of five Tamil news websites by the government. This is also confirmed in a letter at page 16 dated 28 May 2014 from the NSJA, as well as confirming that a magazine "Salaram" was also banned by the government. This was a magazine that the appellant also wrote for.
12. It was submitted by Ms Bayati that the difficulty for the First-tier Tribunal was the lack of written articles in the appellant's own name. It is not the case that his claim has changed. He had written some articles which were

political and some which were not. Judge Froom had accepted that he wrote articles critical of the state but the question was whether a link could be made between those articles and the appellant. The appellant's evidence was that he had used the same email address for those articles and there was evidence that Gmail and hotmail accounts are monitored. There are now articles from Pathivu critical of the government in the appellant's own name.

13. Whether or not the articles he had written for Salaram were critical of the government, that publication is nevertheless viewed as an anti-government publication. That would be sufficient to put him at risk.
14. Judge Froom did not accept that the appellant had been detained before he left, the claim being of detention in August 2010, and it is agreed that there is no basis for that finding to be re-opened. However, the fact that he was not targeted before he left Sri Lanka does not indicate that he would not be at risk today on return. Since the end of the conflict the government in Sri Lanka has been focused on ensuring that there is no resurgence of the LTTE. The aim has been to stamp out criticism, in particular from the media. Thus, even in May 2014, Pathivu was blocked.
15. In the light of the decision in GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) he would be questioned on return and information would be passed to the local area where he would be monitored. He would be recorded as having written articles in relation to publications, one of which is banned and the other blocked.
16. Furthermore, although he has not been involved in organising activities in the UK for the Tamil Diaspora, the authorities do undertake strict surveillance and are able to distinguish between those who simply attend. Enquiries would be made to see if he is in fact a threat.

My assessment

17. The appellant's claim to have been detained in August 2010 was rejected by Judge Froom and it is accepted that that finding is to stand.
18. It was also found by Judge Froom that the appellant would not be reasonably likely to bring himself to the attention of the authorities on return by writing further articles. Amongst his reasons for coming to that view were that the appellant's interest in writing articles appears to have waned since August 2010 although it was accepted that the appellant is a person who holds sincere political opinions adverse to the Government of Sri Lanka, that finding again is not infected by the error of law. Whilst this particular finding was not the subject of submissions by either side before me, by the same token on behalf of the appellant it was not suggested that this finding could no longer stand. There is in fact nothing to suggest that the appellant has indicated that he does intend to write further articles were he to be returned.

19. A number of adverse credibility issues are raised in the reasons for refusal letter. Some of those issues were resolved in the appellant's favour. However, a matter that remains an issue that potentially undermines his credibility is his failure to have claimed asylum much sooner than he did.
20. The evidence and competing arguments on this issue are clearly set out at [50] of Judge Froom's determination. In summary, the appellant arrived in the UK in September 2010 with a valid student visa but did not claim asylum until April 2014, after removal directions had been set twice. Prior to the claim for asylum the appellant had made what is described in the refusal letter as a human rights application, presumably under Article 8. The appellant's explanation for not having claimed asylum at the time when removal directions were initially set seems to have been that he feared being returned to Sri Lanka by charter flight. In cross-examination he said that he had no opportunity to claim asylum earlier, or at that point, and had to wait. Submissions were made to Judge Froom on behalf of the appellant to the effect that a person who holds a student visa and who is under the influence of an agent might hold back from claiming asylum at the point of arrival and even during the currency of their leave.
21. On the face of it, in my judgement the delay by the appellant in claiming asylum is a matter that has the potential to undermine the credibility of his claim to fear return.
22. The appellant gave evidence before Judge Froom to the effect that the email address that he used for the articles that he wrote that criticised the government was the same email address that he used to write non-critical articles of the government. As I pointed out at [15] of the error of law decision, the judge's manuscript record of proceedings recorded this as the appellant's evidence and Ms Bayati's note of the evidence was to the same effect. Of course, the appellant's evidence has not been accepted in all its respects. For example, a fundamental aspect of his account which was rejected was his claim of having been detained in August 2010. Accordingly, it cannot be taken as read that anything the appellant asserts must be accepted.
23. Although it is suggested in the appellant's skeleton argument before me that it was *implicit* that Judge Froom accepted the appellant's evidence that he used his pseudonym email account to send articles in his own name as well, such a conclusion is inconsistent with the conclusion I expressed in my error of law decision. It is necessary to make a separate finding on that matter.
24. Having said that, Judge Froom's positive credibility findings all relate to the appellant's journalistic activities, and which are, to varying degrees, supported by the documentary evidence. Those activities include then, the email account that he used. In those circumstances, I am satisfied that it is reasonably likely that the appellant has given a credible account of having used the same email address in sending articles written in his own name and articles written in a pseudonym.

25. Aside from the issue of which email addresses were used, before me further evidence was adduced in relation to articles written by the appellant. This evidence consists of two articles dated 13 March 2009 and 9 May 2009, respectively, both for Pathivu. In translation the articles plainly have the appellant's full name at the top. There is no need to set out in detail the content of those articles. Suffice to say, they unambiguously criticise the government's human rights record in relation to Tamils and express support for the cause of Tamil separatism.
26. It was submitted on behalf of the respondent before me that there was no evidence of where those articles came from, and that it was significant that they were written about five and a half years ago. It was accepted that they had the appellant's name on them but his previous claim was that the risk to him arises as a result of a link between email addresses rather than because of articles in his name that are critical of the government.
27. Notwithstanding those submissions, there is little basis from which to conclude that those documents are not reliable, when seen in the context of the evidence overall. The integrity of the evidence from that same organisation, Pathivu, was accepted by Judge Froom. Ms Bayati in submissions explained the basis on which the understanding of the appellant's claim has evolved in the light of evidence that he has been able to produce over the course of the proceedings.
28. Thus, I am satisfied that it is established as reasonably likely that the appellant worked as a journalist, writing articles critical of the Sri Lankan Government, both under a pseudonym and under his real name. Pathivu Online, for which he wrote some of those articles critical of the government, has been blocked by the government, as demonstrated by the evidence to which I have referred. Similarly, although he wrote articles that were not critical of the government for the publication known as Salaram, that has also been blocked or banned.
29. According to GJ, one of the categories of persons at real risk of persecution or serious harm on return to Sri Lanka is "Journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan Government, in particular its human rights record, or who are associated with publications critical of the Sri Lankan Government."
30. I bear in mind such adverse credibility findings as have been made by the First-tier Tribunal. I also take into account the submissions made on behalf of the respondent at the hearing before me to the effect that there is no evidence that the authorities have approached the appellant's family or have made enquiries as to his whereabouts, it being submitted that he has not therefore, come to the attention of the authorities. I also bear in mind that he was able to leave Sri Lanka legally on his own passport. There is also the delay in his claiming asylum and the question of when he undertook his journalistic activities, in terms of the risk to him now.

31. Nevertheless, I am satisfied that the facts of the appellant's case which have been established to the lower standard clearly put him within one of the risk categories identified in GJ.
32. It does not seem to me that his activities in the UK in terms of attending demonstrations and meetings would, on a self-contained basis, create a real risk on return. However, those activities are to be considered in the context of his journalism and what is said in GJ about the monitoring by the Sri Lankan security forces of Diaspora activity in the UK. In any event, even without taking into account his political activities in the UK, such as they are, the risk is established.
33. In these circumstances, I am satisfied that the appellant has established to the required standard that there is a real risk of persecution on return to Sri Lanka on account of his actual or imputed political opinion. It follows in this case that there is also a real risk of a breach of his human rights with reference to Article 3 of the ECHR.

Decision

34. The decision of the First-tier Tribunal involved the making of an error on a point of law. The decision of the First-tier Tribunal is set aside and the decision re-made, allowing the appeal on asylum grounds, and on human rights grounds under Article 3 of the ECHR.

Anonymity

In the light of my conclusions, I consider that the appellant should not be identified. Accordingly, I make an order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Consequently, this determination identifies the appellant by initials only.

Upper Tribunal Judge Kopieczek

9/01/15

ERROR OF LAW DECISION



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

Appeal Number:AA/02934/2014

THE IMMIGRATION ACTS

Heard at Harmondsworth

On 26 June 2014

Determination

Promulgated

On 14 January 2015

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

**EB
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C. Bayati, Counsel instructed by A&P Solicitors

For the Respondent: Mr M. Logo, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant is a citizen of Sri Lanka, born on 6 May 1988. He arrived in the UK on 4 September 2010 with a valid student visa. He was detained by immigration authorities on 8 March 2013 on the basis that he was working in breach of the restrictions on his employment. Ultimately, the appellant claimed asylum. That claim was refused and a decision made on 2 May 2014 to remove him to Sri Lanka.
2. His appeal against that decision was dismissed by First-tier Tribunal Judge Froom after a hearing on 2 June 2014, the hearing having commenced and been adjourned on 15 May 2014. Permission to appeal against Judge Froom's decision was granted on 18 June 2014.
3. The basis of the appellant's claim, in summary, is that he had been a member of the Tamil Students' Union and had attended a number of student demonstrations until he left Jaffna in 2007. Before that he had assisted the LTTE by transporting parcels on his bicycle. He ceased those activities in 2006. He did other work for the LTTE when he went to Colombo.
4. Between 2008 and 2010 he worked as a journalist on a voluntary basis, writing articles critical of the human rights record of the government, under a pseudonym. However, other articles that he wrote were related to student activities and were not critical of the government.
5. He says that he was arrested on 2 August 2010 at a checkpoint, being told that he was suspected of being a terrorist. He was detained for eight days and ill-treated during his detention. He was released on payment of a bribe by his father.
6. Judge Froom rejected the appellant's claim that he had ever been the subject of adverse attention by the authorities, concluding that it was not reasonably likely that he had been detained in 2010.
7. He accepted that the appellant had worked as a volunteer journalist, and that he had, under a pseudonym, written articles that criticised the human rights record of the government. However, he found that the authorities had not discovered that he was the author of those articles and nor would they on his return to Sri Lanka. Although he accepted that the appellant is a person who holds sincere political views adverse to the government, he concluded that he was not reasonably likely to bring himself to the attention of the authorities by writing further articles.
8. He accepted that the appellant had taken part in meetings and demonstrations in the UK in support of Tamils, as referred to in his witness statement at [16], but found that those activities were not reasonably likely to lead to his being identified as being involved in those activities by the authorities. Thus, he would not be at risk for that reason on return to Sri Lanka.

Submissions

9. Ms Bayati relied on the grounds of appeal to the Upper Tribunal. She said that there was no challenge to the findings of fact made by Judge Froom who had accepted that the appellant had written articles critical of the government of Sri Lanka under a pseudonym. Evidence was given by the appellant at the hearing before Judge Froom that he had used the same e-mail address in relation to the articles that were critical of the government, and those that were not. The judge had not referred to that evidence which was fundamental to the question of whether or not there was a reasonable likelihood that a link would be made to the appellant as the author of the articles that were critical of the government.
10. In addition, the judge did not consider the question of whether in any event the appellant would be at risk because of his link to a publication that was *perceived* to be against the government. There was evidence that a journalist working for the same student publication 'Saalaman', had been shot and that the publication had been banned. The judge had accepted that the appellant had written articles for that publication, albeit ones that did not criticise the government.
11. Although it had been accepted that the appellant had given a credible account of his attendance at demonstrations, there was no assessment of the extent to which the appellant would thus be identified and then linked to his journalistic activities. I was referred to the decision in GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)
12. Mr Logo submitted that the matters relied on really only amounted to a disagreement with the findings that were open to the First-tier judge. In relation to the issue of the e-mail accounts, the question was what weight should be attached to that matter. Considering the determination as a whole it is apparent that Judge Froom took into account all the evidence. He was not required to refer to every piece of evidence.
13. It was further submitted that even if there was an error of law in the judge's decision, it was not an error of law that was material. In relation to the appellant's attendance at demonstrations, the judge had applied GJ and concluded that such attendance would not put him at risk.

My assessment

14. I announced at the hearing that I was satisfied that there is an error of law in the First-tier judge's decision such as to require the decision to be set aside. My reasons are as follows.

15. Although not referred to in the determination, I am satisfied that the appellant gave evidence that the e-mail address that he used for the articles that he wrote that criticised the government was the same e-mail address that he used to write other, non-critical articles. This is revealed in the judge's manuscript record of proceedings which I read to the parties. Ms Bayati's note of the evidence given at the hearing is to the same effect. In addition, in closing submissions at the hearing before the First-tier Tribunal, this evidence was referred to as an indication of risk that the appellant would be connected to the anti-government articles, when considered against the background of the sophisticated intelligence network of the Sri Lankan government.
16. At [47] of the determination there is reference to Ms Bayati's submission in terms of the routine monitoring of Gmail accounts. However, the judge noted that at [162] of GJ the evidence was only that computers could be traced where Hotmail accounts were used. As the appellant's e-mail account does not contain his real name the judge concluded that it was difficult to see how this could have led the authorities to the appellant.
17. However, I am satisfied that that conclusion fails to take into account the evidence from the appellant that he used the same e-mail account for both types of article. I am satisfied that in failing to take into account this evidence the judge erred in law. Of course, it is not incumbent on a judge to refer to every piece of evidence, but I do consider that this was important evidence that needed to be taken into account. I do not agree with Mr Logo's submission that if there was an error of law in this respect it is not an error of law that is material. I am satisfied that it is evidence that could have had an effect on the outcome of the appeal. The use by the appellant of the same e-mail account is evidence from which it could be argued at least, that a link could be made to his writing of anti-government articles.
18. The appellant is said to have written for Pathivu Online, and there was supporting evidence to that effect from Pathivu.com, as well as evidence in the letter dated 28 May 2014 from the North Sri Lanka Journalists' Association ("NSJA"). That letter also referred to the appellant having written for a student publication referred to in the letter as "Salaram" but referred to in the grounds of appeal to the Upper Tribunal as "Salaaram" or "Chaalaram". The NSJA letter states that both Pathivu Online and Salaram have been either blocked or banned because of, in essence, the anti-government content of those publications. Judge Froom referred to this letter and to its stating that Pathivu Online had been blocked by the authorities.
19. In the determination the country guidance in GJ is quoted. One of the risk categories is "Journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan government, in particular its human rights record, or who are associated with publications critical of the Sri Lankan government." (my

emphasis). I am not satisfied that Judge Froom considered the potential for risk to the appellant by reason of association with publications critical of the government on the basis of the evidence before him. That is not to say that in so concluding I have come to any view on whether the appellant does in fact come within that risk category, merely that I am satisfied that the First-tier Tribunal did not give the matter appropriate consideration in the light of the evidence before him. In this respect I am also satisfied that there was an error of law in the decision of the First-tier Tribunal, and again that it is an error of law that means that the decision should be set aside.

20. It was accepted by the First-tier judge that the appellant had taken part in certain 'diaspora activities' in the UK. At [53] there is reference to the fact that there was unchallenged evidence on that issue. In the same paragraph there is reference to GJ at [336] and the conclusion that was reached in that case to the effect that attendance at demonstrations is alone not sufficient to create a real risk of adverse attention from the Sri Lankan authorities. The same paragraph of GJ, and quoted in the First-tier Tribunal's determination, also refers to the diaspora as being "heavily penetrated by the security forces", with photographs being taken of public demonstrations and with the Sri Lankan government possibly using face recognition technology, and that the question which concerns the government of Sri Lanka is the identification of Tamil activists working for Tamil separatism and to destabilise the unitary Sri Lankan state. It is also to be noted that at [353] it refers to the sophisticated intelligence enabling it to distinguish those who are actively involved in seeking to revive and re-fund the separatist movement within the diaspora.
21. Whilst I do not, for the moment at least, consider this to be the strongest of the grounds, it seems to me that there is merit in the submissions made by Ms Bayati to the effect that the First-tier judge ought to have considered the appellant's activities in the UK in conjunction with, rather than separately from, his history. Whilst it is evident that Judge Froom did refer at [54] to the appellant's history in terms of his finding that the appellant had not come to the attention of the authorities in Sri Lanka, it is the appellant's journalist history which appears to me to be of most significance in this regard. Subject to any later further argument, what is said in GJ about the Sri Lankan authorities distinguishing those involved in diaspora activities who are of interest (and those who are not), indicates that there is a means to identify particular individuals. The appellant's journalistic history is arguably relevant in this context.
22. Judge Froom clearly gave careful consideration to the appellant's account, to the background material and to relevant country guidance. He made detailed and helpful findings of fact. However, I am satisfied that in the respects to which I have referred above, he erred in law, requiring the decision to be set aside.

23. In the light of the very detailed findings of fact made by Judge Froom, I do not consider that it is appropriate for the appeal to be remitted to the First-tier Tribunal. Neither party before me dissented from that view. It was not possible to proceed to the re-making of the decision at the hearing before me, in the light of what I was told about further evidence that was to be relied on on behalf of the appellant. Mr Logo was also in some difficulty because of his late involvement with this appeal due to some administrative difficulty within his office.
24. Notwithstanding the submissions made by Mr Logo, I announced at the hearing that I was satisfied that the appeal should no longer be subject to the fast-track procedure, having regard to rule 5(4)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008.
25. The parties' attention is drawn to the directions set out below.

Anonymity

I make an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Consequently, this determination identifies the appellant by initials only.

DIRECTIONS

1. The decision will be re-made in the Upper Tribunal.
2. No later than 14 days before the next date of hearing, the parties are to file and serve any further evidence relied on.
3. Within the same time frame, the appellant is to file and serve a skeleton argument which includes consideration of the matters referred to in the paragraphs below.
4. Subject to any further submissions from either party, the findings of fact made by the First-tier Tribunal, except in so far as any such findings are infected by the error(s) of law, are to stand.
5. The parties must be prepared to make submissions at the resumed hearing in terms of whether any further findings of fact are required relating to the appellant's account. A possible example is the appellant's evidence that he used the same e-mail address in relation to both types of articles that were published.
6. The parties are also required to be in a position to assist the Tribunal in relation to how best to ensure the appellant's anonymity in the proceedings before the Upper Tribunal.

Upper Tribunal Judge Kopieczek

26/06/14