



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

Appeal Number: AA/12160/2011

THE IMMIGRATION ACTS

**Heard at Field House
On: 20 March 2015**

**Determination Promulgated
On 23 March 2015**

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

TM

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Physsas, instructed by Duncan Lewis Solicitors

For the Respondent: Ms A Brocklesby-Weller, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Sri Lanka, who claimed asylum on 16 August 2011. This application was refused by the Secretary of State on 17 October 2011, and a decision was thereafter made on the 25 October 2011 to remove the appellant.
2. The appellant brought an appeal to the First-tier Tribunal. In a determination signed on 16 June 2012 the First-tier Tribunal dismissed the appeal on all grounds, finding the appellant's account to be lacking in credibility in many respects. The appellant appealed this

determination to the Upper Tribunal, but that appeal was dismissed – Upper Tribunal Judge Warr concluding that there was no material error of law in the First-tier Tribunal’s determination.

3. Undeterred by this the appellant appealed to the Court of Appeal, with the permission of Jackson LJ. On 22 January 2015 Underhill LJ ordered that:

“The appeal is allowed to the extent that the case is remitted to the Upper Tribunal, for the Upper Tribunal to determine whether it or the First-tier Tribunal will conduct a substantive reconsideration of the Appellant’s appeal, in the terms set out in the attached statement of reasons”

4. Paragraph 4 of the Statement of Reasons reads:

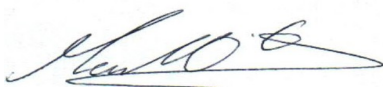
“The parties agree that the Upper Tribunal erred in law in finding no error of law in the First-tier Tribunal’s approach to the medical evidence when considering the credibility of the Appellant’s claim and in the First-tier Tribunal’s approach to the background evidence and country guidance for the reasons given in the grant of permission. Therefore, it is agreed between the parties that the matter should be remitted to the Upper Tribunal of the Immigration and Asylum Chamber for a substantive reconsideration of the Appellant’s appeal, with the Upper Tribunal to consider whether it or the First-tier Tribunal will conduct a full re-hearing of the appeal.”

5. Thus the matter came before me.

6. For the reasons given by Underhill LJ I find that the First-tier Tribunal’s determination of 16 June 2012 contains an error of law capable of affecting the outcome of the appeal and I set such determination aside.

7. It was submitted by the parties that the re-hearing of the appeal should be de novo, a submission I am in full agreement with. As to whether this de-novo rehearing should be undertaken by the First-tier, or Upper, Tribunal - having considered paragraph 7 of the Senior President’s Practice Direction of 25 September 2012 I conclude that the nature and extent of the judicial fact finding which is necessary for the decision in the appeal to be re-made is such that it is appropriate to remit the case to the First-tier Tribunal - an approach advocated by both parties.

Signed:



Upper Tribunal Judge O’Connor
Date: 20 March 2015