



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/02478/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
Reasons Promulgated
On 12 February 2016
2016**

**Decision &
On 22 February**

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**SLA
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Ms A Fijiwala, Senior Home Office Presenting Officer
For the Respondent: Mr D Coleman, counsel instructed by Lawland Solicitors

DECISION AND REASONS

1. This is an appeal against a decision of FTTJ LK Gibbs, promulgated on 9 December 2015.
2. Permission to appeal was granted on 4 January 2016 by FTTJ Andrew.

Background

3. The respondent arrived in the United Kingdom during June 2010 with leave to enter as a Tier 4 migrant. He was granted further leave to remain until February 2015. That leave was curtailed with no right of appeal on 7 May 2013 as the Tier 4 sponsor had withdrawn its sponsorship owing to the respondent's lack of attendance. He applied for asylum during July 2014.
4. The basis of the respondent's asylum claim is that he is of Sinhalese ethnicity and that his problems in Sri Lanka began as a result of hosting a Tamil friend, MS, in his home. The respondent met MS on an IT course in 2007. The respondent subsequently helped him find a job in Colombo and MS stayed with the respondent's parents until December 2010. MS was arrested in November 2012. The respondent did not believe MS to be a member or supporter of the LTTE. The Sri Lankan authorities were said to believe that the respondent had been helping the LTTE because of the assistance he had given MS in finding a job and a place to stay. Consequently, they had been to the respondent's family home to look for him.
5. The Secretary of State did not accept that, at the height of the civil war, a person of Sinhalese origin would befriend a person of Tamil origin and be able to house him and find him a job with a Sinhalese man without problems. Reference was also made to the vagueness of important aspects of the account as well as the respondent's delay in seeking asylum.
6. At the hearing before the First-tier Tribunal, the respondent sought an adjournment in order to have further time to obtain evidence to dispute a Document Verification Report (DVR), which indicated that an arrest warrant submitted at an earlier hearing, was a forgery. That application was refused. The FTTJ decided that the respondent had put forward a credible claim, that the Secretary of State had not proved that the arrest warrant was not genuine and that *"the fact that there is an arrest warrant in his name means he will be stopped on return to Sri Lanka."*

Error of law

7. Permission to appeal was sought on the basis that the FTTJ had materially misdirected himself as to the civil standard of proof owing to his references to needing to be satisfied to *"the higher end"* of the spectrum that the DVR was reliable evidence. The application acknowledged errors on the DVR but argued that it was *"far from clear"* that the FTTJ would have rejected the DVR if he had applied the correct standard of proof.
8. The FTTJ granting permission did so for the reasons set out in the grounds, with reference to Re B (Children) (FC) [2008] UKHL 35.

The hearing

9. Ms Fijiwala promptly advised me that the Secretary of State wished to withdraw the appeal, with a view to granting the respondent leave to remain in the United Kingdom.
10. I accordingly considered the following provisions of the Tribunal Procedure (Upper Tribunal) Rules 2008;

17.—(1) *Subject to paragraph (2), a party may give notice of the withdrawal of its case, or any part of it—*
(a) [] by sending or delivering to the Upper Tribunal a written notice of withdrawal; or
(b) orally at a hearing.
(2) Notice of withdrawal will not take effect unless the Upper Tribunal consents to the withdrawal except in relation to an application for permission to appeal.

11. In view of the fact that the respondent had been granted leave to remain in the United Kingdom, I was prepared to consent to Ms Fijiwala's oral notice of withdrawal. I therefore had no need to hear from Mr Coleman.

Decision

I consent to the Secretary of State's application to withdraw the appeal.

12. An anonymity direction was made by the FTTJ and I consider it appropriate that this be continued and therefore make the following anonymity direction:

"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. "

Signed

Date: 14 February 2016

Deputy Upper Tribunal Judge Kamara