



**Upper Tribunal  
(Immigration and Asylum Chamber)  
AA/00667/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at North Shields**

**Decision & Reasons**

**On 9 June 2017**

**Promulgated**

**On 20 June 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**THILEPAN THILLAINATHAN  
(NO ANONYMITY DIRECTION)**

Respondent

**Representation:**

For the Appellant: Mr S Whitwell, Senior Home Office Presenting Officer

For the Respondent: Ms S Jegarajah (counsel) instructed by Duncan Lewis & Co, solicitors

**DECISION AND REASONS**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State

against a decision of First-tier Tribunal Judge Fox, promulgated on 3 February 2017. which allowed the Appellant's appeal.

### Background

3. The Appellant was born on 17/04/1985 and is a national of Sri Lanka. On 24/03/2016 the Secretary of State refused the Appellant's protection claim.

### The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Fox ("the Judge") allowed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 9 March 2017 Judge Page gave permission to appeal stating inter alia

The respondent has identified an arguable error of law in complaining that there has been a procedural error such as to amount to a material error of law. The respondent argues that the correct course for the Judge to have taken in circumstances where the Judge appears to take the view that the correct course would be for the respondent to make a decision on the evidence, following a consent order settled in judicial review proceedings, in favour of the appellant would have been to remit this matter to the respondent to conduct a further investigation into the appellant's claim for asylum and consider the position afresh. The Judge at paragraph 17 has said that the result of the appeal being allowed in the appellant's favour was that the respondent would do this. It is unsatisfactory for the reasons that the respondent has given so permission to appeal is granted.

### The Hearing

5. Ms Jegarajah, counsel for the appellant, told me at the outset that the appeal is no longer resisted.
6. (a) Mr Whitwell, for the respondent, moved the grounds of appeal. He referred me to [17], [23] and [26] of the decision. In those paragraphs, the Judge says that he allows the appeal to the limited extent that the case is remitted to the respondent to consider of new and to make a lawful decision. Having said that, the Judge summarises the decisions incorrectly by saying that the appeal is allowed on asylum grounds, on humanitarian protection grounds and on article 2 and 3 ECHR grounds.  
  
(b) Mr Whitwell relied on Greenwood (No.2) (para 398 considered) [2015] UKUT 00629 (IAC). He took me to [9] and [15] of the decision where, he told me, the Judge adequately sets out the flaws in the respondent's decision. He asked me to substitute my own decision remitting this case to the respondent so that the respondent can make a lawful decision.
7. Ms Jegarajah told me that there had been an earlier determination in this case in 2014. Following that determination, there were judicial review proceedings which were settled by a consent order sealed on

22/12/ 2015. Explicit provisions were made in the consent order regarding confidentiality. One condition agreed to in the consent order was that the respondent should not have regard to the 2014 decision. The reasons for refusal letter dated 24 March 2016 draws on what was contained in the decision of 2014. Ms Jegarajah did not resist the appeal, but expressed concerns that the decisionmaker to whom this case will soon go must be made aware that consideration of the case is to be made of new, and is not to be made by reference to the Home Office refusal letter of 13 May 2014 or the First-tier Tribunal decision in 2014.

## Analysis

8. At [9] of the decision the Judge records the consent order sealed on 22 December 2015. At [15] of the decision the Judge records the presenting officer's position that the reasons for refusal letter dated 24 March 2016 is flawed. At [17] & [23] the Judge quite clearly states that he intends to allow the appeal to the limited extent that the case is to be remitted to the respondent to consider of new.
9. There is nothing wrong with the Judge's decision until [24] of the decision. Between [24] and [29] of the decision the Judge strays away from the clear path that he takes up to [23] of the decision and appears to consider the appellant's article 2, 3 and 8 ECHR grounds of appeal. [28] is clearly a clerical error, rather than a sentence or paragraph
10. It is quite clear that the Judge's concentration wavered when he summarised his decisions. The summary of decisions appear to allow the appeal under both the 1950 and 1951 convention, and then find that the appellant is entitled to humanitarian protection. Those are not the decisions that the Judge reaches. The actual decision is contained in [17], where the Judge says  

To that end I allowed the appeal. In all eventualities, I am satisfied that the respondent will conduct a fresh investigation into the appellant's claim for asylum and consider his position afresh. A decision will subsequently be issued. Subject to the terms of that decision, fresh Appeal rights may be generated.
11. [24] to the end of the decision contradicts the findings clearly set out at [17] and repeated at [23]. The final part of the Judge's decision is clearly a material error of law. I must therefore set the decision aside
12. Because there is nothing wrong with the first 23 paragraphs of the decision, and on the joint motion of the parties to this appeal, I am able to substitute my own decision by simply recording accurately the decision that the First-tier Tribunal Judge reached.
13. I therefore set the decision of the First-tier Tribunal aside because it contains a material error of law

14. I substitute my own decision.
15. The appeal is allowed to the limited extent that this case is remitted to the respondent to consider of new, in line with the consent order sealed on 22 December 2015 and without reference to either the decision made on 30 May 2014 by the respondent or the First-tier Tribunal decision of 2014.
16. The case is remitted to the respondent to make a lawful decision.

Signed  
2017

Paul Doyle

Date 16 June

Deputy Upper Tribunal Judge Doyle