



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

Appeal Number: AA/02095/2015

THE IMMIGRATION ACTS

Heard at Field House

On 4th April 2017

**Decision &
Promulgated
On 2nd May 2017**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**MOHAMED SILMY MOHAMED HILMY
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Wamadi instructed by MBM Solicitors
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of Sri Lanka, appealed to the First-tier Tribunal against the decision of the Secretary of State of 22nd January 2015 to refuse to grant him asylum and humanitarian protection in the UK. First-tier Tribunal Judge Lodge dismissed his appeal in a decision promulgated on 7th October 2016. The Appellant now appeals to this Tribunal with permission to this Tribunal.

2. The background to this appeal is that the Appellant contends that he is at risk on return to Sri Lanka as a result of his arrest there in 2008 prior to coming to the UK in October 2008 and his arrest there in 2011 after returning to Sri Lanka. The Respondent accepted the Appellant's identity and nationality but did not accept the Appellant's claim that he was arrested and detained by the Sri Lankan authorities in 2008 and 2011. The Respondent noted in the reasons for refusal letter that the letter produced from the Sri Lankan attorney was dated 26th June 2012 whereas the events described were said to have occurred in June 2013 predating the issue of the Appellant's claimed arrest warrant.
3. The Appellant's appeal against the decision of the Secretary of State was initially heard in the First-tier Tribunal in April 2015 and First-tier Tribunal Judge Stott dismissed the appeal in a decision promulgated on 27th April 2015. However, the Upper Tribunal decided that there was an error of law in that decision and set that decision aside. Consequently the Appellant had a fresh hearing in the First-tier Tribunal on 20th September 2016 before First-tier Tribunal Judge Lodge. There was no appearance by or on behalf of the Appellant. The judge noted that the notice of hearing had been returned with an indication that the Appellant was not living at that address. He noted that the solicitors had been advised of the hearing but had not appeared and a telephone call was made to the solicitors' office but no there was no appearance. The judge considered that it was proper to proceed with the hearing and he decided the appeal in the absence of the Appellant.
4. In the renewed Grounds of Appeal to the Upper Tribunal it is contended that the Appellant was unaware of the appeal hearing date. The Grounds of Appeal note that the Appellant's previous solicitors wrote to the Tribunal on 22nd October 2016 saying that they were no longer acting for the Appellant. He instructed new solicitors on 3rd November 2016 and his new solicitors were informed by the Tribunal that the Appellant's appeal had been dismissed.
5. In granting permission to appeal Upper Tribunal Judge Plimmer referred to two aspects of the Appellant's grounds of appeal to the Upper Tribunal. She considered that it is arguable that the Appellant was unaware of the hearing in the First-tier Tribunal on 20th September 2016 and directed that the Appellant lodge a witness statement supporting this ground. Upper Tribunal Judge Plimmer also considered that it is arguable that the First-tier Tribunal failed to consider whether or not there was an error in the date on the letter from the Sri Lankan lawyer. She further directed that the Appellant's solicitors should file and serve evidence clarifying this matter in advance of the Upper Tribunal hearing. In a letter dated 3rd March 2017 the Appellant's solicitors indicated that further evidence from the lawyer in Sri Lanka had not yet been obtained. A number of further documents were submitted including a letter from the Appellant's previous solicitors dated 23rd September 2015 advising the Tribunal of the Appellant's change of address.

6. At the outset of the hearing I advised the parties that I had checked the Tribunal file and that it was apparent that the notice of hearing in respect of the First-tier Tribunal hearing on 20 September 2016 had been sent to the Appellant at [-8] Havelock Street. That letter had been returned to the Tribunal with a note on the envelope saying that the Appellant did not live there. First-tier Tribunal Judge Lodge relied on that letter in deciding that he was satisfied that the Appellant had been notified of the date and time of the hearing.
7. In fact (as confirmed by the letter submitted in the further bundle from the Appellant's current solicitors dated 3rd March 2017) the Appellant's previous solicitors had advised the Tribunal on 23rd September 2015 that the Appellant had moved to number [-6] Havelock Street from his previous address of [-8] Bridge Street. The Appellant had never lived at [-8] Havelock Street. Therefore the notice of hearing was served on the wrong address and was not therefore served on the Appellant. In these circumstances Mr Tarlow properly accepted that it appeared that the notice of hearing had gone to the wrong address and he accepted that it was in the interests of justice that the Appellant should have his appeal reheard.
8. The decision to proceed with the hearing in the absence of the Appellant where he had not been given notice of the hearing led to a procedural unfairness. In these circumstances it is appropriate that the decision of the First-tier Tribunal be set aside.

Notice of Decision

The decision of the First-tier Tribunal Judge contains a material error of law and should be set aside.

The appeal should be remitted to the First-tier Tribunal for a de novo hearing.

No anonymity direction is made.

Signed

Date: 28th April 2017

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT **FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date: 28th April 2017

Deputy Upper Tribunal Judge Grimes