



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

Appeal Number: DA/00239/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 25 September 2018**

**Decision & Reasons
Promulgated
On 05 November 2018**

Before

**THE HONOURABLE LADY RAE
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE ALLEN**

Between

**DAMION ANTHONY WILSON
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer

For the Respondent: Mr R Claire instructed by Moorehouse Solicitors

DECISION AND REASONS

1. This matter was remitted to the Upper Tribunal by the Court of Appeal following a hearing in April of this year, the judgment being reported at [2018] EWCA Civ 797. At paragraph 36 of its decision the Court of Appeal allowed the Secretary of State's appeal and remitted the matter to the Upper Tribunal.

2. There had been an application for an adjournment before us on the basis that the appellant had not received the respondent's bundle, having been directed to resubmit all the previous evidence. In directions the Tribunal had required the Secretary of State to explain his position.
3. We heard submissions from both representatives, both of whom were of the view that in light of what had been said by the Court of Appeal it would be appropriate for the matter to be sent back for a full rehearing before the First-tier Tribunal.
4. Upon consideration we agree. It is clear from paragraph 29 of the Court of Appeal's decision that the First-tier Tribunal erred in law in applying the considerations constituting the public interest, for the reasons given by the court. Bearing in mind that the First-tier Judge's decision was in 2014, it seems clear that there will have to be a significant fact-finding exercise before the matter can be reconsidered in the context of the correct legal test. Accordingly, we allow the Secretary of State's appeal to the extent that the matter is sent back for rehearing at Taylor House before a judge other than Judge Elliman.
5. We further direct:-
 - (1) The Home Office is to serve its bundle on the appellant and the First-tier Tribunal no later than fourteen days from the date of these directions before us.
 - (2) The Home Office is also directed to serve the appellant's bundle from the First-tier hearing on the appellant and the Tribunal no later than fourteen days from the date of these directions.
 - (3) As regards the costs issue raised by Mr Claire, any submissions he wishes to make in regard to costs are to be sent to the Upper Tribunal no later than fourteen days from the date of these directions. The Secretary of State if he wishes to respond has seven days to do so from the date of that deadline.
 - (4) No anonymity direction is made.



Signed

Date: 24th October 2018

Upper Tribunal Judge Allen