



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

Appeal Number: PA/13501/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 2 May 2019**

**Decision & Reasons
Promulgated
On 21 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**MR R T
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss S Jegarajah, Counsel instructed by A & P Solicitors

For the Respondent: Miss A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Sri Lanka born on 3 June 1988, appealed to the First-tier Tribunal against the refusal of the respondent dated 14 November 2018 to refuse the appellant's protection claim (there being no reason or explanation for the delay in that decision given the appellant claimed asylum on 22 October 2013). In a decision promulgated in January 2019, following a hearing on 3 January 2019, Judge of the First-tier Tribunal Geraint Jones QC dismissed the appellant's appeal.

2. The appellant appeals to the Upper Tribunal primarily on grounds of procedural fairness given that Judge Jones QC refused to admit the appellant's, admittedly late, bundle. Although the judge relied on **Quah v Goldman Sachs [2015] EWHC 759** it was incumbent on the judge to consider whether there were good reasons for admitting the late evidence (see **MD (Pakistan) [2004] UKIAT 00197**) and such good reasons could include, for example, that the evidence is highly pertinent (which Judge Jones QC did not specifically state otherwise).
3. There was also no indication that Judge Jones QC correctly directed himself in relation to the Tribunal Procedure Rules 2014, in particular the overriding objective at Rule 2(1) which is to enable the Tribunal to deal with the case fairly and justly and the case management powers at Rule 4, which include the power to extend or shorten the time for complying with any rule, practice direction or direction.
4. Although Judge Jones QC stated repeatedly that the appellant should not be allowed to "ambush" the other side and that it would have been unjust to expect the respondent to deal with the case developed "on the hoof", such is misconceived. The grounds argue, and it was not disputed, that Judge Jones QC did not put to the respondent whether they objected to proceeding (and I note that Miss Jegarajah indicated before me that the respondent was "ready to go"). It is difficult to see in such circumstances, how the First-tier Tribunal could reach the conclusion that the respondent was being ambushed.
5. In addition, although Judge Jones QC criticised what he said was a last minute sur place claim, as already noted the appellant waited over five years for a decision on his asylum claim, such decision being taken less than two months before his appeal hearing and the appellant clearly noted in the grounds of appeal to the First-tier Tribunal, at paragraph 4, that the appellant had participated in political activities in the UK and would be seen as a political separatist and had actively participated in LTTE meetings and protests.
6. The requirement to ensure justice is done in appeals requiring the most anxious scrutiny will in most cases outweigh the understandable desire on the part of Immigration Judges to ensure that its directions and provisions of the Procedure Rules are "not flouted with impunity" (see including **AK (Iran) [2004] UKAIT 00103**).
7. Miss Everett at the outset quite properly conceded the appeal.

Notice of Decision

8. The decision of the First-tier Tribunal contains an error of law and is set aside. Due to the nature and extent of the fact-finding required and given that it is accepted by all parties that the appellant has not had the opportunity to have had a fair hearing, the appeal is remitted to the First-tier Tribunal, other than to Judge Jones QC. No findings are preserved

9. I note that the appellant's representative has indicated that video evidence will be produced, by way of the appellant's representative's iPad, at the remitted hearing.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 16 May 2019

Deputy Upper Tribunal Judge Hutchinson

**TO THE RESPONDENT
FEE AWARD**

I make no fee award.

Signed

Date: 16 May 2019

Deputy Upper Tribunal Judge Hutchinson