Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/09772/2012

THE IMMIGRATION ACTS

Heard at: Field House	**Determination sent**
8 April 2013 & 11 June 2013	**11 June 2013**

Before
UPPER TRIBUNAL JUDGE O'CONNOR

Between

SK

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms A. Pickup, instructed by Legal Rights Partnership (11/6/13 only)
For the Respondent: Ms Isherwood, Senior Presenting Officer (8/4/13 only)

DETERMINATION AND REASONS

1. I continue the anonymity direction made by the First-tier Tribunal. There is evidence before me to the effect that the appellant is a vulnerable person. Whilst I make no findings in relation to this evidence, it is nevertheless appropriate that the appellant be granted anonymity unless and until a relevant Court or Tribunal directs otherwise. The appellant is to be referred to as SK throughout these proceedings. No report of these proceedings shall directly or indirectly identify the appellant. Failure to comply with this direction could lead to a contempt of court.

2. The appellant is a national of Sri Lanka born 1 January 1972. He appealed to the First-tier Tribunal against the decision of the

Secretary of State to remove him from the United Kingdom, dated 29 June 2012. This appeal was heard by First-tier Tribunal Judge Jhirad on 14 January 2013 and dismissed on Refugee Convention, Humanitarian Protection and Human Rights (articles 2, 3 and 8 ECHR) grounds.

3. Designated Judge Woodcraft granted the appellant permission to appeal to the Upper Tribunal in a decision dated 11 February 2013. The appeal came before me on the 8 April 2013. Neither the appellant, nor his [former] legal representatives, attended the hearing on 8 April. The Tribunal file demonstrated that notices of hearing had been sent by first class post both to the appellant and to his legal representatives on the 6 March 2013, at their given addresses. Neither notice had been returned to the Tribunal. Having considered the Tribunal Procedure (Upper Tribunal) Rules 2008, I concluded that the hearing ought to proceed despite the appellant's failure to attend.

4. At the outset of the hearing of 8 April Ms Isherwood, properly, conceded that the First-tier Tribunal's determination contained an error of law such that it ought to be set aside. I agreed with Ms Isherwood's concession and issued a decision in the following terms on the same date:

    5. The First-tier Tribunal's determination is just over 2 pages in length. Whilst brevity is no bad thing, a determination must contain sufficient reasons to enable the losing party to know why they have lost.

    6. At paragraph 13 of her determination the judge stated as follows: 'My reasons for dismissing the appellant's appeal include those made by the respondent'.

    7. At page 2 of her refusal letter the Secretary of State treats the appellant's various representations from 2011 as a 'fresh claim', but concludes that he is not entitled to leave in the United Kingdom. The appellant had a previous application for asylum refused in June 2002 and an appeal against such application was dismissed in November 2002.

    8. The appellant produced an eleven page statement, in large part directly addressing the reasons given by the Secretary of State for refusing his application. Nowhere in her determination does the judge address this evidence. In my conclusion it is an error for the judge to simply rely on the reasons given in the Secretary of State's refusal letter without providing some explanation as to why she rejected the appellant's evidence given in relation to those reasons. Further, in my conclusion the judge also failed to take an adequate and lawful approach to the two medical reports that had been placed before her by the appellant.

    9. I consequently set aside the decision of the First-tier Tribunal…"

5. As a consequence of their being no application for the determination of the appeal to be remitted to the First-tier Tribunal, I further directed in my decision of the 8 April that it should remain before the Upper Tribunal.

6. A further hearing was listed before me for the 11 June 2013. By way of a facsimile dated 7 June 2013 the Secretary of State wrote in support of an earlier application made by the appellant seeking an adjournment of this hearing, the Secretary of State requesting that it should instead be 're-scheduled' as a For Mention hearing. By way of a decision communicated to both parties by facsimile on the 10 June 2013, Upper Tribunal Judge Kopieczek acceded to the parties request; 'converting' the hearing of the 11 June to a For Mention hearing.

7. Despite having received a copy of the Judge Kopiezcek's decision, the Secretary of State did not attend the hearing. I was notified shortly before the start of the hearing, via my clerk, that whilst the Secretary of State had understood that the hearing of 11 June had been adjourned, she was not aware that a For Mention hearing had been listed in its place. No request was made, however, for the For Mention hearing to be adjourned or put back to later in the day to enable the Secretary of State to be represented. In such circumstances I proceeded with the For Mention hearing in the absence of a representative from the Secretary of State.

8. Amongst the matters I was invited to consider at the hearing of 11 June was an application by the appellant, originally made in writing on 30 May 2013 [albeit by way of a letter dated 10 May 2013], for the determination of his appeal to be remitted to the First-tier Tribunal. I was informed by Ms Pickup that her solicitors had put the author of the Secretary of State's facsimile of 7 June 2013 on notice, prior to the date of that facsimile, that the appellant had made an application to the Tribunal for the hearing of his appeal to be remitted. No comment is made by the Secretary of State regarding this issue in her facsimile of 7 June 2013.

9. The Senior President of the Tribunals' Practice Statement of 25th September 2012 provides as follows:

> "7. "Disposal of appeals in Upper Tribunal
>
> Where under section 12(1) of the 2007 Act (proceedings on appeal to the Upper Tribunal) the Upper Tribunal finds that the making of the decision concerned involved the making of an error on a point of law, the Upper Tribunal may set aside the decision and, if it does so, must either remit the case to the First-tier Tribunal under section 12(2)(b)(i) or proceed (in accordance with

relevant Practice Directions) to re-make the decision under section 12(2)(b)(ii).

[7.2] The Upper Tribunal is likely on each occasion to proceed to re-make the decision instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-

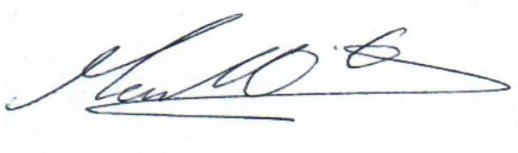
(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

10. Given the terms of my decision of 8 April 2013 I accept Ms Pickup's submission that the requirements of paragraph 7.2 (b) of the Senior President's Practice Statement are fulfilled. In such circumstances, and given that the hearing of the appeal in the Upper Tribunal has, in any event, been adjourned, I conclude that it is appropriate to remit this appeal to the First-tier Tribunal for it to be determined afresh and I direct that this be so.

Decision

The decision of the First-tier Tribunal is set aside. The Upper Tribunal allows the appellant's appeal to the limited extent that it is remitted to the First-tier Tribunal to be re-heard de novo. To this end a Case Management Review Hearing has been fixed for Taylor House hearing centre on 4 July 2013.

Signed: M O'Connor



Judge of the Upper Tribunal Dated: 11 June 2013