



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

Appeal Number: AA/08690/2012

THE IMMIGRATION ACTS

**Heard at Field House
On 6 November 2014**

**Decision & Reasons
Promulgated
On 13 January 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**THUSHANTHAN KARUNAKARALINGAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Yeo, instructed by Birnberg Peirce & Partners
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Thushanthan Karunakaralingam, was born on 24 December 1987 and is a male citizen of Sri Lanka. By an order of the Court of Appeal dated 19 September 2014, the determination of the Upper Tribunal dated 6 July 2013 was set aside and an order made for the appeal to be remitted to the Upper Tribunal to be heard *de novo* by a differently constituted Tribunal.

2. The appeal came before me on 6 November 2014. There was a discussion between the representatives and myself as to the exact meaning of the consent order and the accompanying statement of reasons. The Upper Tribunal's determination had, in turn, addressed errors of law in the determination of the First-tier Tribunal (Judge Amin) which had been promulgated on 15 November 2012.
3. Mr Wilding, for the Secretary of State, argued that a number of findings of the First-tier Tribunal should be preserved, namely those relating to the appellant's claim of persecution prior to his return to Sri Lanka in 2012. He submitted that the grounds of appeal to the Court of Appeal had made no reference to the appellant's historic claims of persecution (which the First-tier Tribunal had rejected) but had concentrated solely upon what had happened to the appellant after he returned to Sri Lanka in 2012. He acknowledged, however, that as regards the findings of the First-tier Tribunal (and Judge Davey) regarding the events in 2012, it was clear that the findings were put in doubt by the determination of the Upper Tribunal in *GJ* [2013] UKUT 319; indeed, on the basis of *GJ* that Laws LJ had granted permission to the Court of Appeal.
4. The appellant did not attend the hearing at Field House on 6 November 2014. No explanation was given. However, Mr Yeo, for the appellant, told me that his instructing solicitors wished to adduce new evidence in the appeal. He also submitted that the Court of Appeal had ordered that all the facts in the case needed to be established by the Tribunal. The court had directed that the matter be "heard *de novo*".
5. I have prepared this determination in order to clarify the position following the making of the consent order in the Court of Appeal. For the avoidance of any doubt, I confirm that the determination of Judge Davey in the Upper Tribunal and the error of law decision of Judges Davey and Taylor have been set aside. In the light of Mr Wilding's comments, I confirm that the determination of the First-tier Tribunal (Judge Amin) was also set aside.
6. I informed the representatives that I intended to direct that none of the findings of fact of the First-tier Tribunal (or, indeed, of the Upper Tribunal) should stand. Mr Wilding is right to point out that the challenge which succeeded in the Court of Appeal concerned events in Sri Lanka in 2012. However, Judge Amin (quite properly) made his findings of fact having considered all the evidence in the round and it is, put simply, impossible to know whether his findings regarding the appellant's account of pre-2012 events was influenced by his findings regarding the events in 2012.
7. I do not consider it appropriate to pick apart the findings of Judge Amin in the manner proposed by Mr Wilding. This does not, however, mean that a subsequent Tribunal may not reach similar findings on the evidence. In the light of the need for a fresh fact-finding hearing to look at all the evidence (including new expert evidence, according to Mr Yeo) I consider that it is appropriate to remit this appeal to the First-tier Tribunal for that Tribunal to remake the decision.

8. I therefore direct as follows:

- (i) The determination of the First-tier Tribunal promulgated 15 November 2012 is set aside. None of findings of fact shall stand.
- (ii) This appeal is remitted to the First-tier Tribunal (not Judge Amin) for that Tribunal to remake the decision. The appeal will be listed at Hatton Cross, if possible, before a salaried First-tier Tribunal Judge. The time estimate will be two hours. Tamil interpreter.
- (iii) The parties shall send to the Tribunal and to each other no later than five working days prior to the First-tier Tribunal hearing copies of any documentary evidence upon which they respectively intend to rely. Original documents should be brought to the First-tier Tribunal hearing.

Notice of Decision

The appeal is remitted to the First-tier Tribunal for that Tribunal to remake the decision.

No anonymity direction is made.

Signed

Date 19 November 2014

Upper Tribunal Judge Clive Lane