



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/04237/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
Promulgated
On 19 September 2018**

Decision & Reasons

On 27 March 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

[P L]

(~~ANONYMITY DIRECTION NOT MADE~~)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Jegarajah, Counsel, instructed by Greater London Solicitors

For the Respondent: Miss J Isherwood, Home Office Presenting Officer

ERROR OF LAW

Introduction

1. The Appellant is a national of Sri Lanka who made a protection claim. That was refused on 14 March 2018. The Respondent rejected the Appellant's account that he had been involved with the LTTE and was wanted by the authorities. The Appellant's appeal against that refusal was heard by First-tier Tribunal Judge Paul ("the judge"), who dismissed it in a decision promulgated on 4 July 2018. The judge rejected the credibility of the account and the reliability of court documentation from Sri Lanka.
2. The Appellant's application for permission to appeal was granted by First-tier Tribunal Judge Lambert on 7 August 2018 on the ground that it was arguable the judge had failed to conduct a fair hearing. The application was

supported by a witness statement of Counsel Ms Walker who represented the Appellant before the judge; her contemporaneous notes of the hearing and her post-hearing attendance note addressed to the Appellant's representatives.

3. The Respondent did not reply to that grant with a Rule 24 response and while Ms Isherwood did not formally concede the appeal, following a productive discussion during the hearing; an examination of the Tribunal's file and an absence of any hearing minutes from the Respondent's representative before the judge, little could be said to defend the decision.
4. Central to the Appellant's formulation of complaint of unfairness is Ms Walker's evidence that following cross-examination the judge caused the Presenting Officer to take instructions in respect of the Appellant's court file and arrest warrant from Sri Lanka that had not hitherto been verified by the Respondent. Ms Walker states that when the hearing resumed the Presenting Officer had been unable to obtain instructions and that following a further discussion led by the judge as to whether to remit the appeal to the Respondent for reconsideration or proceed (the latter being the position adopted by Ms Walker), the judge concluded the hearing with a view to consideration being given as to how to proceed and did not permit oral evidence to be given by the Appellant's partner or allow closing submissions to be made. Ms Walker ends her witness statement by setting out her verbatim record of the judge's explanation to the Appellant. It is not necessary to rehearse that detail here.
5. The evidence of Ms Walker supported by her detailed notes is not challenged by Miss Isherwood. Indeed, she was placed in a difficult position as there was no record of any minutes of the hearing in the Respondent's file. Notwithstanding, the judge's decision and the judge's record of proceedings accords with the evidence of Ms Walker. The judge's decision does not set out what occurred during the hearing or refer to any procedural matters discussed between the parties, and nor does it set out a summary of the parties' submissions. The judge's record of proceedings only consists of two-pages the contents of which are not entirely legible. What can be readily discerned however is the absence of any reference to submissions being made by either party. The judge's decision and the Tribunal's file support the evidence of Ms Walker which I accept. The appellant's credibility has been found wanting and the appeal dismissed without giving the appellant's representative a fair opportunity to present the appellant's case and make submissions.
6. In the circumstances, the Appellant has made out his case of procedural unfairness, and the only proper course is to set aside the decision and remit the appeal for a hearing afresh.

Notice of Decision

The decision did involve the making of an error of law sufficient to require the decision to be set aside and reheard by the First-tier Tribunal by a judge other than Judge Paul.

Signed
Deputy Upper Tribunal Judge Bagral

Date: 1 December 2018