



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

Appeal Number: AA/05789/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 4 August 2014**

**Determination Sent
On 11 August 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

**SRIRAM THIRUVAMPALAMAYAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Turner of Counsel, instructed by Greater London Solicitors

For the Respondent: Mr J Parkinson of the Specialist Appeals Team

DETERMINATION AND REASONS

The Appellant

1. The Appellant is a Tamil national of Sri Lanka born on 29 July 1982.
2. On 26 September 2007 he entered the United Kingdom with leave as a student. He was granted further leave on a number of occasions in the

same capacity, on one occasion on appeal. It appears that in early 2013 the Respondent curtailed the Appellant's student leave whereupon on 23 April 2013 the Appellant sought international surrogate protection on account of a fear of persecution or ill-treatment on return to Sri Lanka because of his political opinion. He stated he had previously been arrested and ill-treated by the Sri Lankan authorities in 2007 because during 2006 on three separate occasions he had provided accommodation for LTTE members. On 31 May 2013 the Respondent refused his application and proposed to make directions for his removal to Sri Lanka.

History of the Appeal

3. By a notice dated 18 June 2013 the Appellant lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act of 2002 as amended. By a determination served on the Appellant on 2 August 2013, Judge of the First-tier Tribunal Abebrese dismissed the appeal on all grounds. On 11 September 2013 Judge of the First-tier Tribunal Brunnen granted the Appellant permission to appeal and at a hearing on 23 October 2013 before the President and Upper Tribunal Judge Latter, the Respondent accepted the determination of Judge of the First-tier Tribunal Abebrese had to be set aside because he had failed properly to consider the medical evidence.
4. The Upper Tribunal gave permission for fresh evidence to be admitted which in the event was the documentation from the authorities and the courts in Sri Lanka and remitted the appeal to the First-tier Tribunal for hearing afresh. On 1 April 2014 the matter came before Judge of the First-tier Tribunal Lobo.
5. A letter of 1 April 2014 which according to the transmission information at the top was sent at 20.47 hours on Monday 31 March by the Appellant's then representatives to the Tribunal stating they would be unable to attend the hearing because "we understand from the representative that his wife had to be admitted to the hospital for delivery before the due date and as a result he is unable to attend the Tribunal for today's hearing". The letter is to be found on the correspondence tag of the Tribunal's file immediately before the Record of Proceedings of the hearing on 1 April. Subsequently there has been filed with the Tribunal a letter of 23 April 2014 confirming a birth by emergency caesarean section at 13.12 hours on 31 March 2014 together with a statement by the representative. The representative states he informed a colleague at 18.00 hours on 31 March that he would not be able to attend the hearing the next day and that the Appellant's file was with him and there was no time to pass it to a different advocate.
6. At paragraphs 2 and 3 of the determination the Judge noted the position and refused an adjournment on the basis that the representative's firm should have been able to cover the situation, albeit at the last moment, by instructing Counsel. He also said:-

This appeal was essentially a re-hearing de novo of a previous appeal because ... that Immigration Judge ... failed to consider the medical evidence. The Upper Tribunal had in addition allowed in new evidence. As an Immigration Judge I am able to consider the medical evidence and the new evidence. Apart from that there were no issues.

The Judge did not make any acknowledgement that the medical evidence and the new evidence from a lawyer in Sri Lanka and the courts there went to the issue of the Appellant's credibility.

7. The Appellant again sought permission to appeal and on 6 May 2014 Judge of the First-tier Tribunal Cruthers granted permission.

Error of Law Hearing in the Upper Tribunal

8. The grounds for appeal challenged the Judge's refusal of an adjournment and asserted he had failed properly to consider the medical evidence, alleging the Judge had made an adverse credibility finding against the Appellant before considering the medical evidence contrary to the process recommended in *Mibanga v SSHD [2005] EWCA Civ 367*.
9. At the hearing copies of the documents relating to the emergency caesarean section of the representative's wife was shown to Mr Parkinson and both parties were referred to the very recent judgment in *PJ (Sri Lanka) v SSHD [2014] EWCA Civ 1011*. The issues raised by the grounds for appeal were discussed between the parties and myself and the parties agreed that in the light of the information about the representative's wife which was before the Judge and that the Appellant had been represented at each step of his appeal, the effect of the refusal of the adjournment application was in all the circumstances tantamount to preventing the Appellant receiving a full and fair hearing. Accordingly, the hearing before the Judge had to be considered as a nullity and it was appropriate for the matter to be remitted for a full re-hearing to the First-tier Tribunal.
10. I would add the Court of Appeal has given some guidance about documentation from Sri Lankan lawyers and Sri Lankan courts in *PJ (Sri Lanka)*.
11. The consequence is that the determination of Judge of the First-tier Tribunal Lobo must be set aside in its entirety and the appeal remitted for hearing afresh in the First-tier Tribunal before a Judge other than Judges of the First-tier Tribunal Abebrese and Lobo.

Anonymity

12. There was no request for anonymity and having considered the documents in the Tribunal file and heard the error of law appeal I find there is no need for anonymity.

DECISION

The determination of Judge of the First-tier Tribunal Lobo contained an error of law such that it should be set aside and the appeal heard afresh in the First-tier Tribunal.

DIRECTIONS

The appeal to be heard before any Judge other than Judges of the First-tier Tribunal Abebrese and Lobo.

Tamil interpreter.

Time estimate - four hours.

Venue - Taylor House on 27 January 2015.

Signed/Official Crest
2014

Date 08. viii.

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal