



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

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5 September 2013**

**Determination Sent**

**Before**

**LORD BANNATYNE  
UPPER TRIBUNAL JUDGE WARR**

**Between**

**SIYAM OMER**

**and**

**SECRETARY OF STATE**

Appellant

Respondent

**Representation:**

For the Appellant: Miss S Jegarajah, of counsel, instructed by LG Law Chambers  
For the Respondent: Mr S Walker, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Sri Lanka born on 27 February 1976. He arrived in the United Kingdom on 3 February 2013 and applied for asylum on 25th February 2013. The application was refused on 27<sup>th</sup> March 2013.

2. The appellant appealed and his appeal came before a First-tier Judge on 14<sup>th</sup> May 2013. In a determination signed on 31<sup>st</sup> May and promulgated on 12 July 2013 the judge dismissed the appeal. The judge did not accept key factors in the appellant's account – for example she did not accept that he had lived in Sri Lanka as an adult and she was not satisfied about his identity or age.
3. The appellant appealed and the principal ground was that the judge had erred in failing to adjourn in the light of the report from Professor Lingam on 10<sup>th</sup> May to the effect that he had been unable to interview the appellant due to his tearful demeanour and requested the appointment to be re-scheduled to 30<sup>th</sup> May 2013. The appellant's evidence should have been considered in the light of a psychiatric report.
4. Once the application for the adjournment had been refused, counsel then instructed (not Miss Jegarajah) had withdrawn as she had only been instructed to request the adjournment. The appellant had then been unrepresented.
5. Permission to appeal was granted on the point – which does not appear to have been raised in the grounds – that the judge had erred in not following the country guidance case of GJ (Sri Lanka) [2013] UKUT 00319 which had been promulgated prior to the date of promulgation on 8 July 2013.
6. At the hearing before us we put the case back to enable Mr Walker to have sight of the determination which was not in his bundle.
7. Miss Jegarajah explained that the appellant had been seen by a forensic specialist who had needed to cancel the appointment and it was quite clear on the face of the report that the appellant had been a vulnerable person who fell to be considered within the Joint Presidential Guidance Note No 2 of 2010 and the evidence should have been considered in that context.
8. The appellant had been seen by a psychiatrist on 26<sup>th</sup> June 2013 and the report had been produced on 10 July 2013 so the delay was not a long one.
9. Mr Walker said he did not feel he could oppose the appeal in the light of the report before the First-tier Judge which had indicated that the appellant was under some form of mental stress.
10. Although the Secretary of State had not initially accepted there was a material error of law – a response had been filed on 14<sup>th</sup> August – it is clear that Mr Walker having given the matter further consideration in the light of the submissions made by Miss Jegarajah was not minded to argue that the judge's findings should be upheld. The change of position was understandable since the grounds of appeal were not ideally drafted and the grant of permission to appeal did nothing to assist. The point about the new country guidance was not pursued by Miss Jegarajah. However, Miss Jegarajah formulated the grounds by reference to the Guidance on vulnerable persons and we accept that Mr Walker felt unable to support the determination. The appellant was left without a representative and though the judge refers to the appellant being composed throughout, in his submissions he said he suffered from forgetfulness and felt faint on occasions. The judge notes he appeared confused in cross-examination.

11. The judge signed the determination applying the country guidance current at the time and was not to be criticised – and indeed the grounds did not criticise – her failure to apply the new guidance.
12. As we have concluded with the agreement of the parties that that the case must be remitted to the First-tier Tribunal and must be re-heard afresh it is of course the position that the appeal will be determined in the light of the prevailing country guidance of *GJ (Sri Lanka)*.
13. The determination was affected by a material error of law. We set it aside by agreement and remit the appeal to the First-tier Tribunal and direct a fresh hearing de novo before a different First-tier Judge.

Signed

Upper Tribunal Judge Warr

5 September 2013