



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

Appeal Number: AA/07379/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 13th February 2015**

**Decision & Reasons
Promulgated
On 18th February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**MR YOGACHANDRAN RAJADURAI
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Lingajothy

For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, Mr Yogachandran Rajadurai date of birth 10th February 1967 is a citizen of Sri Lanka. The Appellant is appealing against the decision of Judge Lambert promulgated on 13th November 2014. By that decision the judge dismissed the Appellant's appeal against the decision of the Respondent to remove the Appellant from the United Kingdom after refusing him asylum or other relief by which he would be entitled to remain in the United Kingdom.

2. By decision taken on 1st December 2014 First-tier Tribunal Judge Frankish granted permission to appeal.
3. On the date of the hearing of 27th October 2014 the Appellant's representative failed to attend. There was at that stage correspondence indicating that the representative by reason of a medical emergency was unable to attend the hearing. The judge having considered that determined to proceed with the hearing without the Appellant being represented.
4. My attention has been drawn to the case of Nwaigwe [2014] UKUT 00418 IAC. That decision makes clear that where a Tribunal refuses an adjournment request such a decision could in principle be erroneous in law in several respects, one of those respects is with regard to the issue of fairness. Fairness arises in a number of aspects and that is set out within the headnote of the case itself. Fairness may not only be an issue as to whether or not a party has been deprived of an effective right to a hearing but where the perception is that a party feels prejudice because of a failure to adjourn the case.
5. In this case it is a very simple matter that the judge determined to proceed despite the fact that a representative instructed by the Appellant was not in attendance. Documentation has now been submitted which indicated indeed that the representative had been taken into hospital albeit on the day after the date of the hearing. The medical note from St George's hospital indicates that the representative presented on 28th October at 11.30 with a history of having had diarrhoea for some four days. The representative was extremely dehydrated and the note from the hospital indicates that he was not fit to work for a further period of at least 24 hours or 48 hours after his diarrhoea had ceased. He was provided with medication by the hospital to deal with the symptoms that he was suffering.
6. Taking those factors into account clearly the Appellant expected to be represented and may feel, whether or not it was a right to feel such, that he had been prejudiced by the fact that he did not have a representative in attendance at his hearing. Such would give a perception to a bystander that the Appellant felt prejudice and that there was a degree of unfairness in proceeding with the hearing without the Appellant being represented.
7. Such unfairness would I find lead to an error of law on the part of the judge. The judge on the basis of the information provided determined to proceed with the hearing and I find that that may expose the whole proceedings to an issue of unfairness such as to be an error of law.
8. In those circumstances I find that there is an error of law in the judge proceeding with the hearing without the representative being in attendance. I canvassed with the parties what the appropriate course was once it had been determined that there was an error of law and the parties agreed that the appropriate course was for this matter to be remitted back

to the First-tier Tribunal for a full hearing without any of the findings of fact made by Judge Lambert being preserved.

9. I do note that there had been a previous determination by Judge Irvine in a previous appeal in respect of this Appellant. The findings of fact by Judge Irvine are to stand and clearly the principles within Devaseelan [2002] UKIAT 00702 do apply.
10. However it is appropriate for this matter to be remitted back to the First-tier Tribunal for a hearing afresh.

Notice of Decision

There is an error of law within the decision and I remit the matter back to the First-tier Tribunal for a full hearing afresh.

No anonymity direction is made.

Signed

Date: **13th February 2015**

Deputy Upper Tribunal Judge McClure