

Background

2. The Appellant is a national of Sri Lanka born on 27 June 1989.
3. The Appellant's immigration history was summarised at paragraph 10 of the Respondent's 'reasons for refusal letter' ('RFRL') dated 12 January 2014. In the event there is some controversy over this history: see further below. For the moment, suffice to say that the Appellant claims he last arrived in the UK on 1 May 2013 from France having left Sri Lanka on 30 April 2013. On 7 May 2013 he sought asylum at the ASU in Croydon; his claim was registered on 16 May 2013.
4. The Appellant's application for asylum was refused for reasons set out in the RFRL of 12 January 2014. A Notice of Immigration Decision also dated 12 January 2014 was served on 15 January 2014 in consequence.
5. The Appellant appealed to the IAC.
6. The Appellant's appeal was dismissed by the First-tier Tribunal for reasons set out in the determination promulgated on 12 March 2014.
7. The Appellant applied for permission to appeal to the Upper Tribunal: this was initially refused by First-tier Tribunal Judge Foudy, but subsequently granted by Upper Tribunal Judge Grubb on 19 May 2014.

Error of Law

8. It was a feature of the Appellant's case that he had previously held a Tier 4 (General) Student visa valid from 21 December 2010 until 16 March 2012. He had come to the UK on 6 January 2011 and returned to Sri Lanka on 21 February 2012. At his screening interview on 16 May 2013. The Appellant claimed that when he left Sri Lanka on 30 April 2013 he travelled on "*a passport that the agent used for me*", and that his own national passport was "*left in Sri Lanka*" (Respondent's bundle A4)
9. At the appeal hearing before the First-tier Tribunal it was indicated, again, that the Appellant's own Sri Lankan passport was at his home in Sri Lanka, and the Judge acceded to a request from the Appellant's representative to consider a copy of the passport if it

were supplied within a few days of the hearing: see determination at paragraph 14.

10. The Judge received and took into account a certified copy of the Sri Lankan passport. The Judge identified "*an embarkation stamp on 6 January 2013*" (paragraph 14).

11. It is clear that the Judge found the information conveyed by this stamp to be inconsistent with the Appellant's account, and in turn placed very considerable reliance upon this inconsistency in reaching an adverse determination of the Appellant's account - including in particular not believing his account of detention and finding that he had deliberately had himself scarred in order to make a false asylum claim. In this context see in particular paragraphs 30, 32 and 34.

12. In challenging the First-tier Tribunal Judge's decision, the Appellant pleads that the Judge has misread the stamp. It is, he submits, the embarkation stamp of 6 January 2011, consistent with the immigration history acknowledged by the Respondent. Moreover, it is pointed out that the Appellant did not exit Sri Lanka using this passport - which is why it remained in Sri Lanka.

13. I have noted the version of the relevant passport stamp that is on file. It is not reproduced at full scale. Further, as I understand it, a copy was taken from the original in Sri Lanka, scanned, attached to an email, forwarded to the Appellant's solicitors in London, printed, and then sent to the Tribunal by facsimile transmission. The date is not, in my judgement, readily discernible as being 2011 or 2013.

14. For reasons that are unclear to me Ms Peterson had not been provided with a better version of the stamp to present to the Tribunal today

15. The Judge has not indicated that she had regard to the possible connection with the acknowledged embarkation on 6 January 2011 when considering this stamp. Nor has the Judge apparently sought to reconcile her interpretation of the stamp with the Appellant's claim not to have travelled on his own passport in 2013.

16. Be that as it may, and notwithstanding that there is not presently available a clearer version of the stamp, in circumstances where the Judge's interpretation of this document very greatly

informed her evaluation of the credibility of the Appellant's case, it seems to me that if the Judge were so troubled she should have considered reconvening the hearing to allow the Appellant to be heard on this matter. The failure to permit the Appellant such an opportunity to address a point not raised by the Respondent and not raised at the hearing was, in my judgement, a breach of natural justice.

17. I find that the Judge erred in law accordingly, on a material matter that went to the heart of the Appellant's credibility.

18. I note that Ms Isherwood very fairly acknowledged the unsatisfactory nature of the Determination in this regard, and was also in agreement with Ms Peterson's submission that the consequence was that the decision of the First-tier Tribunal should be set aside and the decision in the appeal be remade before the First-tier Tribunal.

19. In circumstances where the decision is set aside on the basis of an error of law involving the deprivation of the Appellant's right to a fair hearing, I accept that the appropriate course is to remit to a differently constituted First-tier Tribunal for a fresh hearing: see **MM (unfairness; E & R) Sudan [2014] UKUT 00105 (IAC)** at paragraph 26.

Decision

20. The decision of the First-tier Tribunal Judge contained an error of law and is set aside.

21. The decision in the appeal is to be remade before the First-tier Tribunal by any judge other than First-tier Tribunal Judge KW Brown.

Consequent Direction

1. The Appellant is to file and serve within 14 days clear prints of the scan of his passport. Further, if the original of the passport becomes available, as was intimated in the solicitors' letter of 4 March 2014 enclosing the certified copy of the passport, this should be brought to the appeal hearing.

Deputy Judge of the Upper Tribunal I. A. Lewis 9 July 2014