



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

Appeal Number: IA/02871/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 26 September 2014**

**Determination**

**Promulgated**

**On 23 October 2014**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**ANULA PREMACHANDRA**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss P Yong, Counsel, instructed by Polpitiya & Co Solicitors

For the Respondent: Mr L Tarlow, Home Office Presenting Officer


**DETERMINATION AND REASONS**

1. This is an appeal by a female citizen of Sri Lanka now aged 89 years, against a decision of the First-tier Tribunal dismissing her appeal against the decision of the respondent refusing to vary her leave to remain in the United Kingdom. The decision complained of has not always been identified as an appealable immigration decision but I am satisfied that the Tribunal does have jurisdiction to hear this appeal.
2. The case has taken some interesting twists and turns but the essential points are set out below. The appellant has a history of coming to the United Kingdom to visit her son and daughter-in-law with permission and leaving in accordance with that permission. On the occasion of the most recent visit she had permission to remain in the United Kingdom until November 2013.

3. The appellant's health deteriorated. This is not at all surprising for a woman of her age. She had a fall. There is medical evidence that she suffered recurring nose bleeds. Attempts to stop the bleeding at a minor injuries unit were unsuccessful and she had to be taken to hospital. Nobody is making too much of this episode. It was not suggested that the appellant was gravely ill but medical attention was necessary and she was diagnosed with blood pressure problems and a shortage of iron. The National Health Service's charges for this treatment have been met by the appellant's family.
4. More significantly for the purposes of this appeal, it was the opinion of the general medical practitioner dealing with the appellant in September 2013 that she was not fit to travel.
5. The appellant's son is a solicitor and her daughter-in-law is a dentist. They were concerned that the appellant would not be fit to travel when her leave to be in the United Kingdom lapsed. Possibly because they have the kind of education which can be expected of people in these professions, they applied to the Home Office, with the assistance of solicitors who are experienced in immigration matters, to extend the appellant's leave. In my judgement the respondent should have given a proper reply to that letter. The respondent should have shown that she appreciated that the appellant was asking for leave to remain because she could not cope on her own and in particular that at the time of writing she could not get to Sri Lanka because she was not fit to travel. It may have been appropriate to clarify if the appellant expected to recover in the foreseeable future and wanted a short extension of her leave or if it was her case that she was not expected to recover so that she could live independently and she wanted a long period of leave. It is conceivable that the respondent would have to say that the application was for a purpose not contemplated by the rules.
6. It seems to me that when the appellant was applying for further leave she was seeking permission to remain under paragraph 317 of HC 395 (the provision relating to dependent relatives) which (I think) was in force at the material time. Without making any findings at all she does appear to satisfy the requirements of that Rule except that she was within the United Kingdom. This is wholly consistent with her case that she is not fit to leave the United Kingdom to return to Sri Lanka to make an application.
7. However the respondent made a standard reply which said much about the application of immigration rules relevant to people who had a long stay in the United Kingdom and the reasons that this appellant did not satisfy them. There was also a disconcerting throwaway remark about what the appellant needed to do if she feared persecution in Pakistan (the appellant is a citizen of Sri Lanka) and a passing reference to her blood pressure problems but, as far as I can see, no appreciation at all of the clear medical evidence that at the material time the appellant was not fit to travel. In other words the refusal letter wholly failed to deal with the point of the application.

8. By the time the case came before the First-tier Tribunal the appellant's health had improved to some extent and the appellant was able to give evidence when she made a good impression on the judge but the judge dismissed the appeal. He clearly misdirected himself about the evidence at one point because he said that the medical evidence about her condition predated the fall, when it plainly did not. There is a Rule 25 response from the Presenting Officer's unit suggesting that the judge's error lay in the way he expressed himself rather than in his understanding of the case because other parts of the determination suggested that he had appreciated that the medical evidence was about what happened to the appellant when she fell. However, arguing that the decision is right on the basis the judge did not say what he meant is never a particularly comfortable position for a party to proceedings. I am really not sure what the judge meant. If he decided that the appellant was fit to travel because there was no fresh medical evidence he should not have reached that decision. Frailty in elderly people is not, for example, similar to a common cold where experience of life suggests that a complete recovery can be expected soon. I find that the First-tier Tribunal's explanation for its decision is too opaque to be lawful and I set it aside.
9. This case could have been argued in a very legalistic way but both representatives before me have tried to be constructive and pragmatic and Mr Tarlow, I know, has had an opportunity to consider the position.
10. I have decided that the proper course here is to say that the First-tier Tribunal did err in law and that the proper decision was that the decision of the Secretary of State was not in accordance with the law because it did not address the points that were raised by the appellant's application.
11. The proper course now is for the Secretary of State to look at the case again and make a fresh decision on the available evidence. If it is now the case in October 2014 that the appellant is still unfit to travel it would be in everybody's interests that the solicitors say so and disclose supporting evidence as soon as possible to the Secretary of State.
12. I set aside the decision of the First-tier Tribunal and I substitute a decision allowing the appellant's appeal to the extent that the Secretary of State's decision was not in accordance with the law and the application needs to be decided again.

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal



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Dated 21 October 2014