



**Upper Tribunal  
(Immigration and Asylum Chamber)  
OA/06710/2013**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1 August 2014**

**Determination  
Promulgated  
On 5 August 2014**

**Before**

**Deputy Upper Tribunal Judge MANUELL**

**Between**

**MISS THIVIYAJANANI SELVAPRAGASAM  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr P Saini, Counsel  
(instructed by Genga & Co Solicitors)  
For the Respondent: Mrs L Kenny, Home Office Presenting Officer

**DETERMINATION AND REASONS**

*Introduction*

1. The Appellant appealed with permission granted by Upper Tribunal Judge King on 29 April 2014 against the determination of First-tier Tribunal Judge Thanki who had

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dismissed the Appellant's appeal in a determination promulgated on 9 January 2014. The determination covered both the Appellant and her brother. The brother's appeal was allowed under Appendix FM by the judge but that was the subject of the grant of permission to appeal which will be addressed by the tribunal in a separate determination.

2. The Appellant is a national of Sri Lanka, born on 14 January 1988, who had sought leave to enter the United Kingdom for settlement as an adult dependant child under Appendix FM, which was refused by the Entry Clearance Officer, Chennai on 15 February 2015. It was conceded before Judge Thanki that the Appellant could not meet Appendix FM and her appeal was pursued on Article 8 ECHR grounds. The Appellant's mother had been granted leave to enter on review by the Entry Clearance Manager and, as already noted, the judge had allowed the Appellant's brother's appeal. Thus the judge was well aware that the Appellant would be remaining in Sri Lanka on her own.
3. Permission to appeal was granted by Upper Tribunal King, following refusal by First-tier Tribunal Judge R A Cox, because he considered that it was arguable that the judge had given insufficient consideration to the emotional and cultural bonds between the Appellant, her mother and brother. She had not yet demonstrated an independent life. The Respondent indicated by a rule 24 notice that the appeal was opposed.

*Submissions - error of law*

4. Mr Saini for the Appellant relied on the grounds of onwards appeal on which permission to appeal had been granted. The judge had not placed the appeal into the South Asian cultural context. The Appellant had lived with her father until she was 9, a fact the judge had overlooked or been mistaken about in his inchoate assessment. Her father was continuing to supervise her life in the traditional culture of protection for single, unmarried female. The fact that the Appellant was absent at university was not important as the Appellant otherwise lived with her mother and brother. The Appellant was guarded at her hall of residence. It was the case that her father (her sponsor) was not a refugee and had returned to Sri Lanka for a funeral as the judge had correctly noted.

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5. Mrs Kenny for the Respondent submitted that the evidence showed as the judge had found that the Appellant lived away from home. The judge's reasons had been adequate. The Appellant had been living with her mother and there had been no male protection at their home. There were other relatives in Sri Lanka.
6. In reply, Mr Saini submitted that the judge had not taken into account the susceptibility of young women and the other relatives were not relevant.
7. The tribunal reserved its determination which now follows.

*No material error of law finding*

8. In the tribunal's view little can be usefully added to the reasons for refusing permission to appeal given by Judge R A Cox:

"It was acknowledged on [the Appellant's behalf] that she could not meet the requirements of Appendix FM of the [Immigration] Rules but reliance was placed on Article 8 outside the rules. The judge had allowed the appeal of her brother, who suffers from epilepsy and requires constant attention from his mother in particular.

"I have carefully considered the determination in relation to the grounds. Having done so, I find no arguable merit in them. They amount in truth to more than a disagreement with adequately reasoned and sustainable conclusions that were fully open to the judge in all the circumstances. Article 8 is not designed to provide a remedy for every misfortune or disappointment in life. Rather, the enquiry is of hard-edged legal nature whereby appeals to such matters as "cultural nuances" (ground 20 are unlikely to carry significant weight.

"The grounds do not disclose an arguable material error of law..."

9. It is not easy to see why permission to appeal was granted by the Upper Tribunal Judge. The Appellant was not in the United Kingdom and there was no reference to the Article 8 ECHR rights of her father in the grant.

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10. The determination took full account of the submissions that the Appellant could not live by herself as a single woman in Sri Lanka and was not independent: see [21] and [25]. The judge found that Article 8 ECHR was not engaged in connection with the Appellant's father, who had long been absent from her life. At one point in [26] the judge refers to contact twice since birth, erroneously, although elsewhere he states that the sponsor left Sri Lanka when the Appellant was a child, accurately. But the substance of the case was the same, i.e., an almost complete absence for the majority of the Appellant's life, albeit that the Appellant's father was supporting her, as the judge had correctly noted. The error of fact was thus not material.
11. The Appellant was already 25 by the date of the decision and had been living away from home for several years. That is not a person leading a sheltered life. Her studies were in dance, which it was hardly necessary for the judge to point out involves public performance. Such objective evidence as was placed before the judge did not show that single women in Sri Lanka are at risk. There was no cultural evidence which the judge ignored. The Appellant was in any event an adult proposing to move to a somewhat different culture where amongst other matters the Equality Act 2010 applies. It was open to the judge to find that the Appellant was already leading an independent life in Sri Lanka and could continue to do so without undue difficulty.
12. Moreover, it was equally obvious that the whole situation of family separation was based on family choice. The sponsor is not a recognised refugee. The civil war in Sri Lanka ended over 5 years ago. There was no evidence before the judge that the family the sponsor left behind has ever suffered harm on his account, nor indeed any of his other relatives. He thus is able to return to Sri Lanka and live his family life there, particularly if he wished to supervise his daughter until her marriage. The result of the Entry Clearance Officer's refusal in the daughter's case was to leave matters as they had been between herself and her sponsor.
13. The tribunal finds that there was no material error of law in the determination and there is no basis for interfering with the judge's decision.

**DECISION**

**Appeal**

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The making of the previous decision did not involve the making of an error on a point of law and stands unchanged

**Signed**

**Dated**

**Deputy Upper Tribunal Judge Manuell**