



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

Appeal Number: HU/26532/2016

THE IMMIGRATION ACTS

Heard at Field House

On 9th October 2018

**Decision & Reasons
Promulgated**

On 9th November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**MRS HETTIACHCHIGE DONA RITA TILLEKERATNE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Turner, instructed by City Heights Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Sri Lanka, appealed to the First-tier Tribunal against a decision made by the Secretary of State on 3rd September 2016 refusing her application for leave to remain as the spouse of a person present and settled in the UK. The appeal was dismissed by First-tier Tribunal Judge Cameron in a decision promulgated on 15th March 2018. The Appellant now appeals to this Tribunal with permission granted by First-tier Tribunal Judge Saffer on 13th August 2018.

2. The background to this appeal is that the Appellant applied for leave to remain as a spouse. The Respondent refused the application on the basis that the Appellant had not satisfied the maintenance requirements of the Immigration Rules as set out at page 4 of the reasons for refusal letter. The main issue raised there was that the Appellant had not provided twelve months' bank statements highlighting the Sponsor's salary being deposited into the appropriate bank account.
3. The Appellant appealed to the First-tier Tribunal on 1st December 2016. In her Notice of Appeal she indicated that she wished to have the appeal determined by way of an oral hearing. On 18th December 2017 City Heights Solicitors sent a fax to the Immigration and Asylum Chamber at Taylor House indicating that the firm had been instructed by the Appellant, advising that she wished to have the appeal considered on the papers and attaching a bundle of documents for consideration by the Tribunal.
4. On 2nd March 2018 the appeal was listed before First-tier Tribunal Judge Cameron. Judge Cameron noted that the Appellant was not represented and did not attend the hearing and went on to determine the appeal on the basis of the documents before him. The judge noted at paragraph 14 that no documents had been provided by the Appellant in support of the appeal. The judge went on to consider the appeal in accordance with the Immigration Rules and Article 8 outside of the Immigration Rules and dismissed the appeal.
5. It is suggested in the Grounds of appeal that the First-tier Tribunal should set aside the decision in accordance with Rule 32 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. The First-tier Tribunal appears not to have exercised that power.
6. There are two Grounds of Appeal put forward. It is firstly contended that the judge erred in failing to consider the documents submitted by the Appellant in connection with the appeal. The second Ground of Appeal contends that the judge erred in failing to give proper reasons for his findings.
7. Permission was granted by First-tier Tribunal Judge Saffer on the basis that it is arguable that the documents submitted by the Appellant were not before the judge when he prepared the decision and that this is a procedural error which, through no fault of the judge, can be a material error of law.
8. Along with the application for permission to appeal there is a copy of a fax log dated 18th December 2017. Mr Tufan accepted that this is a fax report in relation to documents sent by the Appellant's solicitors on 18th December 2017. Mr Tufan also accepted that the documents submitted on 18th December 2017 were not before the First-tier Tribunal Judge.
9. It is clear from the judge's decision that these documents were not before him at the time therefore I find that a procedural error occurred when

these documents were not put before the First-tier Tribunal Judge. This procedural error is material in that the documents submitted were capable of going to the issues to be determined. In light of this procedural material error I set aside the decision of the First-tier Tribunal.

10. The effect of the procedural error is such that the Appellant has not had the opportunity to put her case to the First-tier Tribunal. The nature and extent of the fact-finding required is such that it is appropriate to remit the appeal to the First-tier Tribunal to be determined afresh.

Notice of Decision

11. The decision of the First-tier Tribunal contains a material error of law and I set it aside.
12. I remit the appeal to the First-tier Tribunal.

No anonymity direction is made.

Signed

Date: 31st October 2018

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

As the appeal remains outstanding before the First-tier Tribunal the issue of a fee award is to be determined by the First-tier Tribunal Judge who is considering the appeal again.

Signed

Date: 31st October 2018

Deputy Upper Tribunal Judge Grimes