



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

Case No: UI-2023-000158

First-tier Tribunal No: HU/51333/2022  
IA/02099/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 19 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**ENTRY CLEARANCE OFFICER**

Appellant

**And**

**SUMATHY ANANTHAKUMARAN**  
**(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Ms A Everett, Senior Home Office Presenting Officer  
For the Respondent: Ms S Anzani, of Counsel, instructed by Nag Law

**Heard at Field House on 25 April 2023**

**DECISION AND REASONS**

*Introduction*

1. The claimant is a citizen of Sri Lanka born on 30<sup>th</sup> September 1976. She arrived in the UK in 2013 as an asylum seeker and her claim was refused. She was not removed to France pursuant to removal directions dated 24<sup>th</sup> July 2014 set to return her to France to pursue her asylum claim there. An appeal prior to her departure from the UK was dismissed by Judge of the First-tier Tribunal Oakley in a decision promulgated on 22<sup>nd</sup> December 2015, and on 2<sup>nd</sup> May 2016 the claimant made a voluntary departure to Sri Lanka.

2. Whilst in the UK, on 21<sup>st</sup> October 2014, the claimant married Mr Appiah Ananthakumaran. On 12<sup>th</sup> July 2016, after returning to Sri Lanka, the claimant made an application to return to the UK as a spouse, which was refused by the respondent in February 2017. The claimant appealed and the appeal was dismissed on 16<sup>th</sup> February 2018 by Judge of the First-tier Tribunal McLaren, and permission to appeal was refused.
3. The claimant made an application for entry clearance to come to the UK as a spouse on 28<sup>th</sup> January 2021. This application was refused on 8<sup>th</sup> November 2021. Her appeal against this decision was allowed by First-tier Tribunal Judge Ficklin after a hearing on 21<sup>st</sup> June 2022.
4. Permission to appeal was granted to the Secretary of State by Upper Tribunal Judge Jackson on 21<sup>st</sup> February 2023 on the basis that it was arguable that the First-tier judge had erred in law in failing to properly apply Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka [2002] UKIAT 00702 and in finding that there was reason to depart from the previous decision of the First-tier Tribunal when inter alia there was in fact no proper evidence that the medical note that not been before that Tribunal.
5. The matter came before me to determine whether the First-tier Tribunal had erred in law, and to decide if any such error was material and the decision should be set aside.

#### *Submissions - Error of Law*

6. In the grounds of appeal and in oral submissions from Ms Everett it is argued for the Secretary of State, in summary, as follows. It is said that the First-tier Tribunal came to a different conclusion from the previous First-tier Tribunal without proper evidence that there was any different evidence before the new Tribunal, and therefore failed to properly apply Devaseelan. It is argued that the First-tier Tribunal erred in law, at paragraphs 15 and 16 of the decision, firstly in indicating that there was evidence that the medical note was not before the previous First-tier Tribunal when the evidence on this issue from the previous solicitor was that it was before the first First-tier Tribunal, and when it was in any case not supported by medical records or a GP letter and further, as evidence which could have previously been obtained, had erred by not treating that evidence with sufficient circumspection as required by Devaseelan. Ms Everett accepted however that if the medical note was found to be new evidence not subject to findings/determination by the first First-tier Tribunal the decision of the current First-tier Tribunal was a reasoned and rational determination of the appeal.

7. In the Rule 24 notice and in oral submissions from Ms Anzani it is argued for the claimant, in summary, as follows. It is argued that there is no evidence that the finding that the medical note was probably not before the previous First-tier Tribunal was wrong. The evidence the respondent alludes to in the grounds of appeal is in the claimant's bundle at page 12. The evidence was an email from the previous solicitors, A& P Solicitors, to the current solicitors dated 27<sup>th</sup> May 2022 to say that they had submitted the medical note to UK Visas and that counsel, who had represented before the original First-tier Tribunal, had referred to that fact in her skeleton argument. The email specifically does not say that the medical note was before the first First-tier Tribunal however. There was no reference to the medical note in the 2018 First-tier Tribunal decision. It is argued therefore that it was rationally open to the current First-tier Tribunal to conclude that this evidence played no part in the decision-making of the previous First-tier Tribunal, and further there was no error in law in failing to apply "greatest circumspection" to this evidence as it is clear the claimant had done her part in providing the evidence to her solicitors and to the respondent but the previous First-tier Tribunal Judge made no findings with respect to it. It is also argued that there was no irrationality in finding the medical note did not need to be corroborated by further evidence as proper reasons are given for this finding.

#### *Conclusions - Error of Law*

8. It is recorded at paragraphs 11 and 12 of the decision that the claimant met the requirements of the Immigration Rules to enter the UK as a spouse bar the issue of whether she fell to be refused under the general grounds for refusal at Part 9 (9.8.2) of the Rules due, in turn, to her having absconded and failed comply with immigration control by failing to attend for removal on 24<sup>th</sup> July 2014.
9. At paragraph 13 of the decision the First-tier Tribunal properly records that the decision of Judge of the First-tier Tribunal McLaren is to be taken as the starting point for this appeal in accordance with Devaseelan. The First-tier Tribunal also properly directs itself that if new evidence that was not before the previous First-tier Tribunal judge is relied upon then consideration must be given to why it was not produced previously, and the need to apply "greatest circumspection" to such evidence if it could have been previously produced. There is no error of law in these self-directions.
10. At paragraph 16 the First-tier Tribunal decides that she can consider the sick note as new evidence as there is no mention of it in the decision of Judge McLaren, as recorded at paragraph 15 of the decision, and so no evidence it was considered in the making

of that decision, even though the evidence is inconclusive as to whether it was actually put in a bundle before that previous Tribunal. I find that this is an entirely reasonable factual position to have taken given the email evidence in the appellant's bundle before the First-tier Tribunal from the previous solicitors. I also find that the approach is in line with the guidance in Devaseelan: it is clear from the evidence of the previous solicitors that the claimant had done her part in producing the medical note evidence at the time of the previous appeal and so there is no reason for circumspection being applied to this evidence; it is also clear that Judge McLaren did not see it as material to have considered this evidence in making the 2018 decision of the First-tier Tribunal, and as such there were no findings upon it which formed part of the starting point decision for this second First-tier Tribunal.

11. At paragraph 17 the First-tier Tribunal rejects the idea that a UK GP sick note needs other records (a GP letter or GP notes) to accompany it to have the potential to be given weight as evidence of a person being unwell. I find that this is a sufficiently reasoned and rational position to have taken. As a result, I find, that the First-tier Tribunal comes to the reasonable conclusion at paragraph 18 of the decision that the July 2014 removal directions were not cancelled as a result of the claimant failing to attend but as a result of the sick note, particularly as there is no evidence from the respondent's contemporaneous documentation that the cancellation was due to the claimant having failed to attend.
12. The appeal is then entirely rationally allowed at paragraph 23 of the decision as there is no proper basis of refusal under paragraph 9.8.2, and therefore the requirements of the Immigration Rules are met; and therefore there is no public interest which makes the interference with the claimant and sponsors' family life, that refusal of entry clearance constitutes, proportionate.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
2. I uphold the decision of the First-tier Tribunal allowing the appeal on human rights grounds.

**Fiona Lindsley**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**25<sup>th</sup> April 2023**