Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/20341/2012

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 11 November 2013	**On 25 November 2013**

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

ENTRY CLEARANCE OFFICER – CHENNAI
(POST REF: CHENNAI/1415312)

Appellant

and

MRS INDIRANY AMBALAVANAR

Respondent

Representation:

For the Appellant: Mr S Ouseley, Home Office Presenting Officer
For the Respondent: Mr J Martin, Counsel, instructed by Nag Law Solicitors

DETERMINATION AND REASONS

1. This is the Entry Clearance Officer's appeal against the decision of First-tier Tribunal Judge Jacobs-Jones, promulgated on 12 July 2013, following a hearing at Hatton Cross on 5 July 2013, whereby the judge allowed Mrs Ambalavanar's appeal against the Entry Clearance Officer's decision refusing her application for settlement in order

to join her son, a British citizen, in the UK. For ease of reference, I shall refer throughout this decision to the Entry Clearance Officer, who was the original respondent, as "the ECO" and to Mrs Ambalavanr, who was the original appellant, as "the claimant".

2. The claimant, who is a citizen on Sri Lanka born on 26 January 1945, is a widow, and applied under paragraph 317(iv)(a) of the Immigration Rules to join her children in the UK. The ECO refused her application because he considered that the claimant had not established that the maintenance requirements under the Rules had been satisfied.

3. The claimant appealed against this decision and as already noted, her appeal was allowed by the First-tier Tribunal.

4. In her determination, Judge Jacobs-Jones made findings that in addition to financial support from the main sponsor, the claimant would also be supported by her other son. She considered that genuine offers of financial assistance from third parties could be taken into account "with a view to assessing whether the cumulative income would adequately maintain" the claimant, and found that it would.

5. The basis of the ECO's appeal was that this aspect of the judge's findings was not adequately reasoned, because the judge had not given any consideration to the expenses of the third parties who would be providing support. It was recognised (at paragraph 4 of the grounds) that the "ultimate decision may have been correct", but without adequate reasoning, the decision could not stand.

The Hearing

6. I heard submissions on behalf of both parties, and I also heard evidence subsequently from four witnesses, all of whom were cross-examined. I recorded the submissions and the evidence contemporaneously, and as these notes are contained in my Record of Proceedings I shall not set out below everything which was said during the course of the hearing. I have, however, had regard to all the submissions and all the evidence, as well as to all the documents contained within the file, when reaching my decision.

Error of Law

7. Having heard submissions on behalf of both parties, I was satisfied that the judge's determination had contained a material error of law, such that the decision would have to be remade. The judge had not considered what expenses the claimant's children would have before concluding that they would be able to provide third party support. In those circumstances, her finding that there would be adequate support available could not stand.

8. I then heard evidence from the claimant's two sons and also her daughter and son-in-law. While the evidence of the claimant's two sons was unsatisfactory, because they were unable to provide a satisfactory breakdown of their expenses, I was nonetheless

satisfied that they were each providing some support towards their mother at present, and would continue to do so.

9. Notwithstanding my reservations as to these witnesses, however, I was very impressed with the evidence of both the claimant's daughter and son-in-law, which I shall summarise briefly. They are both working, and most of their household expenses were paid by the son-in-law, Mr Alex Nirmalanantha, who earned about £20,000 a year net. His wife, the claimant's daughter, Mrs Sivasakthy Nirmalantha, had a basic income of £1,077.93 a month gross, but usually earned much more than that, because she worked overtime. She produced payslips which showed that her monthly net income varied from about £900 to £1,400 a month. Her bank statement showed a healthy balance of around £4,000. It was always substantially in credit. Given that all the substantial outgoings of the household were paid by the claimant's son-in-law, I accept their evidence that between them they would be able to provide, if required, up to £400 per month to support the claimant were she to come here, and I also accept their evidence that they would be willing to do so.

10. On behalf of the ECO, Mr Ouseley accepted that the only issue which was now live was whether or not the maintenance requirement was satisfied, and that the claimant would have to establish only that there would be £311 per month available for her maintenance over and above what her children currently spent. Mr Ouseley accepted that if the Tribunal was satisfied on the evidence which had been given that this sum was available, then the appeal should be allowed. Mr Ouseley also accepted that it would be open to the Tribunal to make a finding that this sum was available.

11. Having heard the evidence, and in particular the evidence of the claimant's daughter and son-in-law, I am entirely satisfied on the balance of probabilities that the necessary sums are available and were available for the maintenance of the claimant as at the date of the decision, and it therefore follows that this appeal must be allowed, and I so find.

Decision

I set aside the determination of the First-tier Tribunal as containing a material error of law, and substitute the following decision:

The claimant's appeal is allowed, under the Immigration Rules.

Signed: Date: 20 November 2013

Upper Tribunal Judge Craig