**Upper Tribunal**
**Immigration and Asylum Chamber** **Appeal Number: VA/02709/2013**

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Promulgated on:** |
|---|---|
| **On 21 October 2013** | **On 22 October 2013** |

**Before**

**Upper Tribunal Judge Kekić**

**Between**

**Mrs Mary Antonette Bernadette Perera**

**Appellant**

**and**

**Entry Clearance Officer**
**Colombo**

**Respondent**

# Determination and Reasons

**Representation**
For the Appellant: Mr A Miah, Counsel.
For the Respondent: Ms K Pal, Senior Home Office Presenting Officer

**Details of appellant and basis of claim**

1. This appeal comes before us following the grant of permission on 9 September 2013 by First-tier Tribunal Judge Wellesley-Cole in respect of the determination of First-tier Tribunal Judge Snape who dismissed, on paper, the appeal of the appellant by way of a determination promulgated on 24 July 2013.

2. The appellant is a Sri Lanka, national born on 27 February 1945. She appeals against the decision of the respondent to refuse her entry clearance to visit her adult children for a period of three weeks.

3. The appeal was dismissed by the judge who did not believe the appellant's intentions were as claimed bearing in mind her lack of income and assets and the fact that she had previously applied for settlement.

4. The grounds argue that the judge did not have regard to all the evidence and erred when she found the appellant had no assets, it being said that documentary evidence of property had been included in the bundle before the Tribunal. Permission was granted on that basis and arguably because the judge had used the wrong standard of proof referring to "not being convinced" in paragraph 12 of her determination.

## Appeal hearing

5. The appellant's daughter attended the hearing and I heard submissions from the parties. Mr Miah expanded upon the grounds and submitted that the appellant had made six previous visits to the UK, had never breached her conditions and that having lost her settlement application and appeal (made in Sri Lanka) she simply wanted to continue her visits to her children. The judge had erred in finding she had no assets (which had been referred to in the decision by Judge O'Flynn in the settlement appeal) and had used a higher standard when reaching her conclusions. In response, Ms Pal submitted that the judge gad properly considered the evidence and was entitled to find that the settlement application cast doubt upon her intentions. Mr Miah replied briefly to say that the appellant had always abided by the rules and whilst she might prefer to live here there was nothing to suggest she would do so unlawfully.

## Findings and Conclusions

6. At the conclusion of the hearing I indicated that I would be setting aside the decision of the First-tier Tribunal and remitting the appeal back to that Tribunal for hearing afresh. I now give my reasons for doing so.

7. I would state at the outset that the appellant and sponsor should never have opted for a paper determination in a case like this. It meant that the judge had no opportunity to assess oral evidence and to seek clarification as to the appellant's intentions and why her claim to now only be a visitor should be accepted. That aside, however, there was a bundle of evidence before the judge which

has not been properly considered. That bundle contained the determination of Judge O'Flynn in the settlement case, which referred to certain assets and income of the appellant. The bundle also contained documentary evidence of property owned by the appellant in Sri Lanka. Whether this evidence would make any difference to the outcome of the appeal is another matter, as it does not appear to have stopped the appellant from making a settlement application. However, the findings of the judge as contained in paragraph 12 are scant, make no reference to the documentary evidence and do not engage with the appellant's witness statement or the skeleton argument. The appeal concerns an elderly lady whose children live in the UK. Dismissal would mean her chances of succeeding in future visit applications would be slim as so the matter should have been given careful attention. At the very least, the findings and conclusions should have been made once all the evidence was properly considered and using the correct standard of proof.

8. The appellant has now opted for an oral hearing and I anticipate that the First-tier Tribunal Judge who has conduct of this case will want to hear evidence as to why it should now be accepted that the appellant will only stay three weeks given the lengthy visits she has made in the past and the fact that she applied for settlement as a result of "suffering" and living in "bad conditions" (see Judge O'Flynn's determination). Whilst a previous settlement application does not necessarily mean that the appellant cannot be trusted in a visa application, oral evidence from her children here and full disclosure of all her circumstances will be of assistance to the judge.

**Decision**

9. The First-tier Tribunal made errors of law. The decision is set aside and shall be re-made on all issues by another judge of that Tribunal.

**Signed:**

**Dr R Kekić**
**Judge of the Upper Tribunal**

21 October 2013