



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

Appeal Number: IA/22667/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 8 May 2015**

**Determination Promulgated
On 14 May 2015**

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**Mrs NIRMALADEVY RAJAGOPALAN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr P Brocklesby-Weller, Home Office Presenting Officer

For the Respondents: Ms F Allen, Counsel (instructed by S Satha & Co)

DETERMINATION AND REASONS

Introduction

1. The Appellant (the Secretary of State) appealed with permission granted by First-tier Tribunal Judge Heynes on 19 February 2015 against the determination of First-tier Tribunal Judge S J Clarke who had allowed (to the limited extent of finding that the Secretary of State's decision was not in accordance with the law) the Respondent's appeal against refusal of her application to remain in the United

Kingdom on Article 8 ECHR grounds in a decision and reasons promulgated on 29 December 2014.

2. The Respondent is a national of Sri Lanka, born on 15 April 1950. Her immigration history is set out at [2] and [3] of Judge Clarke's decision. She had last entered the United Kingdom as a visitor on 1 September 2013, and had claimed that she was too unwell to look after herself if she returned. Judge Clarke found (see [24] of his decision and reasons) that the Secretary of State had not followed her own Guidance on Human Rights Cases on Medical Grounds. The Respondent's representatives had not assisted but there had been a failure by the Secretary of State to seek clarification about the state of the Respondent's health which was a defect in procedure.
3. Permission to appeal was granted because it was considered that it was arguable that the judge had erred in law over the question of whether the Secretary of State ought to have awaited the submission of a medical report which did not in fact arrive for nine months after the application for leave to remain had been submitted, i.e., that the Secretary of State had followed her guidance in the absence of the report.
4. Standard directions were made by the tribunal, indicating that the appeal would be reheard immediately if a material error of law were found.
5. Notice under rule 24 was served on behalf of the Respondent contesting the onwads appeal on the basis that the judge's findings were correct and that the Secretary of State was on notice that the medical evidence was incomplete.

Submissions - error of law

6. Ms Brocklesby-Weller for the Appellant relied on the grounds of onwads of appeal and the grant of permission to appeal. She submitted that there had been no diagnosis of Post-traumatic Stress Disorder as at the date of the Secretary of State's decision. The Respondent's representatives had not complied with the procedures required. The policy guidance had been followed as the judge ought to have found. The judge should have gone on to dismiss the appeal outright.
7. Ms Allen for the Respondent relied on the rule 24 notice. The decision the judge had reached was open to him. There was ample material to justify his conclusion that the Secretary of State ought to have awaited the further medical report which had been promised and ought to have made enquiries in its absence. The guidance stated that clarification ought to be sought.

8. The tribunal indicated at the conclusion of submissions that it found no material error of law in Judge Clarke's decision and reserved its determination which now follows.

No material error of law finding

9. The judge rightly noted that the Respondent's representatives had not assisted the Secretary of State but at [19] of his decision and reasons he found that a further medical report had been promised, and that it was obvious that the Respondent had medical problems. The report stating that the Respondent had Post-traumatic Stress Disorder was not produced until the hearing, but despite some worrying features, the judge considered that the report warranted proper consideration by the Secretary of State in accordance with the guidance. The judge had in mind the section of the relevant guidance headed "**Requesting confirmation**", where it is stated that clarification must [Upper Tribunal's emphasis] be sought if it was unclear what basis the applicant was applying under.
10. As the discretion embodied in the relevant guidance is not part of the Immigration Rules, it was not a discretion reviewable by the First-tier Tribunal, still less exercisable by the First-tier Tribunal. Nevertheless, there was (as the judge rightly found) an obligation on the Secretary of State to apply her own procedures as set out in the guidance before reaching an immigration decision. The reasons the judge gave for finding that the guidance had not been followed were open to him. The decision he reached was also a practical and sensible one: see [24].
11. The tribunal accordingly finds that there was no material error of law in the decision and reasons and there is no basis for interfering with the judge's decision. The Secretary of State must accordingly make a fresh immigration decision which follows her own guidance.

DECISION

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

Signed

Dated 8 May 2015

Deputy Upper Tribunal Judge Manuell