



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

Appeal Number: IA150362013

THE IMMIGRATION ACTS

**Heard at Field House
On 7 June 2017**

**Decision & Reasons
Promulgated
On 26 June 2017**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**MRS THILANI INDIKA MADUPEIRIS YALAGALAGE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Anzani, Counsel, instructed by Nag Law Solicitors
For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Sri Lanka and her date of birth is 23 January 1979. She made an application for leave to remain as a Tier 1 (Entrepreneur) Migrant under the points-based system on 7 December 2012. The application was refused by the Respondent on 18 April 2013.

2. The Appellant appealed. At that time her husband was a co-Appellant and their appeals were dismissed by Judge of the First-tier Tribunal S J Clarke, following a hearing at Taylor House on 26 November 2013.
3. Permission was refused by First-tier Tribunal Judge Pooler on 6 January 2014 and Upper Tribunal Judge Lane on 11 March 2014. The Appellant applied for judicial review in respect of Upper Tribunal Judge Lane's decision and permission was granted by the High Court and the decision of Upper Tribunal Judge Lane quashed on 20 June 2014. Following this Vice President of the Upper Tribunal Ockelton granted permission on 21 April 2017.
4. The Appellant accepts that the evidence that was submitted with her initial application on 31 October 2012 was deficient. However, her evidence was that post the date of the initial application, and before it was returned to her for non-payment of a fee, on 28 November 2012 she submitted further evidence that met the requirements of the Rules. The application was returned to her and she resubmitted it on 7 December 2012 relying on relying on the documents that she sent on 28 November 2012.
5. The judge did not accept the Appellant's evidence and he made the following findings:

“13. I do not accept the Appellant has discharged the burden of proof that the documents relied upon in the Appellant's bundle were those sent under the proof of postage on 28.11.2012. I accept that the date given by the Respondent for the application is 7 December 2012, which is some time after the date found on the application form of 31.10.2012 and in the Immigration history section of the Respondent's bundle it is stated that the form was received on 10 December 2012.

14. I conclude that on the evidence before me, the Appellant has not shown that she provided the proper documents to the Respondent and the appeal must fail. I also conclude, despite this not being raised by the Respondent, the application could not succeed in any event, because the English language test certificates were only awarded after the date of the application, and does not meet the requirement of Paragraph 34 of the Immigration Rules. This was not raised by the Respondent, but it is relevant for me to mention in this determination.”

6. At the hearing before me Mr Duffy conceded that the judge materially erred in respect of the findings about the English language test certificate and there was no need for me to engage any further with this issue.
7. I heard oral submissions from both representatives and I conclude that the judge erred at paragraph 13 of the decision. The judge may have misunderstood the timeline insofar and failed to appreciate that the

Appellant's first initial application had in fact been returned to her. There Applicant's evidence was that she sent the documents after the initial application and I am not sure that the judge understood this.

8. In any event, at paragraph 13 the judge reached an adverse credibility finding in relation to the Appellant which he failed to adequately reason. It is not explained why he did not accept the evidence that the documents had been sent to the Respondent, particularly when there was evidence of proof of postage and he accepted that this established that something had been posted to the Respondent on 28 November 2012. The issue is not explicitly raised in the grounds, but the general tenor of the grounds is that the judge failed to consider the further documentation and therefore, the credibility findings are implicitly challenged. In any event, should I be wrong about that, I grant permission to amend the grounds. There is no prejudice caused to the Respondent.
9. The judge materially erred for the reasons given. I set aside the decision to dismiss the Appellant's appeal. Regrettably I did not have before me an Appellant's bundle containing the documents which she states that she sent to the Respondent on 28 November 2012 and neither representative had a copy. There is no copy bundle available apparently resulting from the passage of time. However, Ms Anzani has the documents and Mr Duffy had the opportunity to look through those documents and he conceded that they meet the requirements of paragraph 41-SD of Appendix A of the Immigration Rules. The only issue was whether or not those documents had been sent to the Respondent on 28 November 2012 as asserted by the Appellant.
10. The parties confirmed that there were no credibility issues raised at the hearing before Judge Clarke and Mr Duffy indicated that he did not take issue in respect of the Appellant's credibility. In the light of this I make a finding that the documents were submitted to the Respondent prior to the date of the decision as asserted by the Appellant and therefore the appeal is allowed under the Rules.

Notice of Decision

The appeal is allowed.

No anonymity direction is made.

Signed Joanna McWilliam

Date 23 June 2017

Upper Tribunal Judge McWilliam