



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/11986/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at: Field House

**Decision and Reasons
Promulgated**

On: 15th January 2018

On: 22nd February 2018

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

ENTRY CLEARANCE OFFICER, CHENNAI

Appellant

And

**SELVA ALAGASUNDARAM
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Melvin, Senior Home Office Presenting Officer
For the Respondent: Ms Jegarajah, Counsel instructed by Jacobs & Co
Solicitors

DETERMINATION AND REASONS

1. Mrs Alagasundaram is a national of Sri Lanka date of birth 30th May 1946. On the 21st April 2017 the First-tier Tribunal allowed her appeal, on human rights grounds, against a decision to refuse entry clearance. The Entry Clearance Officer now has permission to appeal against that decision, on the grounds that the Tribunal applied the wrong legal framework and gives no intelligible reason for the appeal being allowed. The Judge in the First-tier Tribunal was Dr Majid.
2. Mrs Alagasundaram had applied for entry clearance as the dependent adult relative of her British daughter. The ECO had refused to grant entry on the basis that Mrs Alagasundaram had not demonstrated

that she met the requirements of the relevant section of Appendix FM. Nor had she shown that the decision to refuse entry clearance was otherwise a disproportionate lack of respect for her family life. In particular the ECO concluded that Mrs Alagasundaram could not meet the requirements of:

a) E-ECDR.2.4

long-term “You require, due to either age, illness or incapacity, personal care to perform everyday tasks”

b) E-ECDR.2.5

“You must be unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are living, because (a) it is not available and there is no person in that country who can reasonably provide it; or (b) it is not affordable”.

3. These then were the central issues before the First-tier Tribunal.
4. The First-tier Tribunal found the ‘dispositive factors’ in the appeal to be:
 - a) the fact that there would be no recourse to public funds
 - b) the sponsor could provide accommodation in her five-bedroomed house
 - c) the family were paying for private medical treatment
 - d) the Sponsor wanted her mother to be comfortable

Having identified those factors the determination goes on to make reference to a number of cases and political issues before concluding that the appeal should be allowed.

5. The ECO now appeals on the grounds that the Tribunal has failed to address either of the tests contained in Appendix FM and set out at paragraph 2 above.
6. I am quite satisfied that the ECO has demonstrated that this decision must be set aside for error of law. The determination does not refer to any of the applicable law. With no explanation it refers to HC395 and the Immigration Acts 2014 and 2016 and goes on, over the following 20+ paragraphs to make reference to various cases, all of which are irrelevant. It also devotes several paragraphs to discussion of the Conservative Party’s antipathy towards the European Convention on Human Rights. Nowhere does it address the two reasons given for refusing leave to enter.

7. Mrs Alagasundaram must be given a fair hearing before the First-tier Tribunal with the issues in her case properly addressed. I therefore consider it appropriate that the matter be remitted to the First-tier Tribunal. I would note that the case so far appears to have proceeded on the basis that Mrs Alagasundaram is resident in India: on the papers before me that is not quite correct. She made her application via the Chennai post, whilst in India on a visitors visa. She remains a Sri Lankan national. Any evidence submitted by the parties on remittal should therefore take that into account.

Decisions and Directions

8. The decision of the First-tier Tribunal contains errors of law such that the decision must be set aside. The decision in the appeal is to be re-made in the First-tier Tribunal.
9. There is no order for anonymity.

Upper Tribunal Judge Bruce
15th January 2017