



**UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)  
IA/07899/2014**

**APPEAL NUMBER:**

**THE IMMIGRATION ACTS**

**Heard at: Field House  
On: 3 November 2014  
Prepared: 19 November 2014**

**Determination  
Promulgated  
On: 20 November 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MAILER**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Appellant**

**and**

**MRS SELVARANI BALASUBRAMANIAM  
NO ANONYMITY DIRECTION MADE**

**Respondent**

**Representation**

**For the Appellant: Mr S Whitwell, Senior Home Office Presenting  
Officer**

**For the Respondent: Mr M Sowerby, counsel (instructed by Indra  
Sebastian Solicitors)**

**DETERMINATION AND REASONS**

1. For the sake of convenience I shall refer to the appellant as the Secretary of State and the respondent as "the claimant."
2. The claimant is a national of Sri Lanka, born on 19 June 1959. Her application for leave to remain in the UK on the basis of her marriage was refused by the Secretary of State on 30 January 2014 as she was not satisfied that the claimant met the English language requirements. Further, there were no insurmountable obstacles for the couple to live in Sri Lanka. She had not met the requirements of the Article 8 rules.
3. In a determination promulgated on 15 July 2014, First-tier Tribunal Judge Baldwin allowed the claimant's appeal under the immigration rules.
4. The basis of the claimant's application was that she was unaware when she submitted her application that her English language certificate did not suffice. When she learned of this, she took and passed an examination with another body, approved by the Secretary of State [7].
5. At the hearing before the First-tier Tribunal, the claimant was given the opportunity to use English with a view to confirming her basic mastery of it [8]. The Judge found that she struggled considerably in this regard, but did demonstrate some limited command of it before he concluded that in the interests of justice, she should use the Tamil interpreter [8].
6. He found that it was clear from an earlier determination of the claimant's appeal in July 2011 that the Tribunal accepted that the marriage was genuine and subsisting and that her husband could not be expected to move back to Sri Lanka, given that he was granted British citizenship on the basis of problems he had faced in the past in Sri Lanka. She was allowed to join him at the end of 2011 having had to live apart for the previous 18 years. All that stood in the way of the family being allowed to continue the family life that they have been able to establish "is the issue of the English certificate". [16]
7. The Judge found that the Secretary of State had not suggested that the certificate now proved is not genuine. Nor was there anything self-evidently odd about the documents themselves [17].
8. The Judge went on to state that what did appear very odd was just how low a level of English the claimant had, to the extent that he concluded that it was not just to proceed without an interpreter. Nor did her husband or son, with whom she lives, know the name of the college which put her in for the recent tests.
9. However, it was drawn to the Judge's attention just how basic a level of English was required for a pass. He accordingly concluded that it is so very elementary that it is probably not possible to conclude that the claimant could not have sat the test herself. Whilst it would not be

surprising if the Secretary of State were now to make further inquiries of the issuing body, in the absence of evidence before him to suggest that this claimant did not sit the test, he found that she probably did so, and passed it. Accordingly, she succeeded under the rules and it was not necessary to consider Article 8.

10. On 25 September 2014, First-tier Tribunal Judge Lambert granted the Secretary of State permission to appeal. She stated that given the concerns expressed by the Judge at paragraph 17, there was an absence of "cogent evidence based reasoning" for the Judge's apparently inconsistent conclusion that the claimant "probably did sit the test and passed it."
11. Mr Whitwell accepted at the outset that the Secretary of State had not made any inquiries of the issuing body as to whether or not the claimant sat the test herself. There was accordingly no evidence before the First-tier Tribunal in that regard.
12. The secretary of state's grounds were that there was enough reason to doubt that the claimant met the requirements, and given the Tribunal's concerns, the Tribunal should either have adjourned the case to allow the Secretary of State to investigate the matter, or to remit the case for further investigations to be carried out.
13. Mr Sowerby submitted that the Judge's findings were not contradictory. He noted that the Secretary of State had not suggested that the certificates now provided are not genuine.
14. In fact, the Judge stated at paragraph 8 that whilst the claimant struggled, she did demonstrate some very limited command of the language. Further, he concluded that the basic level of English required was so elementary that he could not conclude that the claimant had not sat the test herself.
15. In the circumstances, having provided the certificates, the Judge found on the evidence before him that the appellant probably did sit the test and passed it.

### Assessment

16. Although the Judge noted that the appellant struggled when giving her evidence in English, she had demonstrated some very limited command of the language. However, in the interests of justice, he concluded that she should have the benefit of a Tamil interpreter.
17. He subsequently concluded that the level of English required for a pass was so basic and elementary that he was unable to conclude that the claimant could not have sat the test herself.
18. The Judge also noted that the Secretary of State had not suggested that the certificates provided were not genuine. Nor was there anything odd about them. In the absence of any challenge by the Secret-

ary of State at the hearing before the First-tier Tribunal, I find that the Judge was entitled to conclude, as he did, that the appellant probably sat the test and passed it.

19. Those were findings open to the Tribunal in the circumstances.

**Decision**

The determination of the First-tier Tribunal did not involve the making of any material error on a point of law.

The decision shall accordingly stand.

No anonymity order made.

Signed

Date 19/11/2014

C R Mailer  
Deputy Upper Tribunal Judge