



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/17842/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 18 March 2014

Oral Determination  
Promulgated on 25 March 2014

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

WICKRAMANAYAKE PATHJIRENNEHELAGE DHARSHANAPRIYA  
WICKRAMANAYAKE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms T. Murshed, Counsel, instructed by P. Krama & Co., Solicitors  
For the Respondent: Mr C. Avery, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Sri Lanka who appeals against the determination of First-tier Tribunal Judge R Sullivan promulgated on 27 January 2014 dismissing his appeal

against the decision of the Secretary of State made on 4 May 2013 to refuse him indefinite leave to remain on the basis of long residence.

2. The appeal is now within a very limited compass. It is centred upon whether or not the requirement that the appellant had to provide a knowledge of life certificate in order to support his claim under the provisions of the Rules. The relevant Rule at the material time was contained in paragraph 276B(iv). The application was made on 7 July 2012 and decided, as I have said, on 4 May 2013. During that period the relevant Rule was that “the applicant has sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom unless he is under the age of 18 or aged 65 or over at the time he makes his application.” The appellant was born on 26 October 1966 and therefore was required to meet these obligations.
3. The problem arose because, and it appears to be accepted, the appellant had submitted his original passport to the Home Office on 9 February 2009 and it was then not returned to him. He attempted in March 2009 to apply for his passport back by which time it was expired. The request was declined by the Home Office. He then sought to apply for a fresh Sri Lankan passport at the High Commission but was advised by them that renewal of passports required a valid visa and that of course the appellant did not have. It follows that the appellant was in something of a cleft stick. He applied on one and indeed on a number of occasions to sit the relevant examination but on each occasion the test centre declined to provide him with an opportunity to sit the examination because they were not satisfied about his identity, and the only means by which they would be satisfied about his identity was if he provided either a current or an expired passport, neither of which he had.
4. The Secretary of State does not put forward any reason why the expired passport was not provided to him. Since it was a Sri Lankan passport, (which must mean the respondent cannot claim to be entitled to it as he might do if it had been a United Kingdom passport), I do not know on what basis it can be said that the Secretary of State was entitled to withhold returning it to the appellant. So it was as a result of the respondent’s failure to return it (without establishing a right to possession) that the appellant failed to meet the requirements of the Rules.
5. The matter becomes somewhat more ironic in that when a decision was made to refuse him the refusal decision was *itself* sufficient as a form of identity to enable him to sit the examination and he has now sat that examination and passed it. As I will be re-making the decision, the fact that he has now passed the test is a material factor in establishing not only that he meets the requirements of the Rules *now* but that he did so at the time the decision was made since the acquisition of the skills required to pass the test are likely to have been accumulated over a period of time.
6. Accordingly it seems to me that the issue is whether or not the appellant's failure to provide a KOL, Knowledge of Life Certificate, was a failure under the Rules. In my judgement where the failure is plainly attributable to the act of the respondent it cannot be for the respondent to rely upon her own default in order to say that the application fails. It may be that there are only a very limited number of cases where

one can directly attribute a failure of an application to the failure on the part of the respondent rather than on the part of appellant but in this case I am satisfied this was such a case.

7. Accordingly, the requirements of the Immigration Rules are met and the appellant is entitled to indefinite leave to remain.
8. Were that not to be the case then he is undoubtedly permitted to obtain limited leave under the provisions of paragraph 276A1 and 276A2. This provides for a two year period of leave if the requirements of these Rules are met. Once the two year period of leave has been applied for and obtained, it would then be a springboard by which the appellant would in due course be able to meet the requirements for indefinite leave and it is clear from the decision of the Upper Tribunal in **MU (Statement of additional grounds - long-residence - discretion) Bangladesh [2010] UKUT 442** that an application cannot be made under the long residence Rules for only limited leave to remain. Two years' leave to remain may be granted under paragraphs 276A1-4 but only to people who have applied for indefinite leave who are ineligible for it solely because their knowledge of English or life in the UK is not good enough.
9. Consequently the appellant met the requirements of 276A1 when the decision was made. At the material time those requirements were that the appellant must meet all the requirements of paragraph 276B of the Rules save for the requirement of his having sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom. It follows that the failure to provide the KOL or relevant certificate would not have debarred the appellant from being provided with limited leave.
10. For the reasons that I have given, however, I do not consider that my decision ought to confine itself to a finding that he only meets the requirements of the Immigration Rules for limited leave. I therefore allow the appeal under paragraph 276B of the Immigration Rules - the long residence provisions.

## DECISION

The First-tier Tribunal Judge made an error on a point of law and I substitute a decision allowing the appellant's appeal under paragraph 276B of the Immigration Rules.



**ANDREW JORDAN**  
**UPPER TRIBUNAL JUDGE**