



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

Appeal Number:

IA/48711/2013

**THE IMMIGRATION ACTS**

**Heard at: Field House**

**Determination**

**Promulgated**

**On: 25<sup>th</sup> July 2014**

**On: 30<sup>th</sup> July 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Secretary of State for the Home Department**

Appellan  
t

**and**

**Priyatharsan Thiyagarasa  
(no anonymity order made)**

Respondent

For the Appellant: Mr Duffy, Senior Home Office Presenting Officer  
For the Respondents: Ms Anzani, Counsel instructed by Nag Law Solicitors

**DETERMINATION AND REASONS**

1. The Respondent is a national of Sri Lanka date of birth 28<sup>th</sup> October 1981. On the 15<sup>th</sup> April 2014 the First-tier Tribunal (Judge Seelhoff) allowed his appeal against the Secretary of State's decision to refuse to vary his leave to remain in the UK as a spouse under Appendix FM.
2. The matter in issue in the appeal was finances. In a detailed and cogent determination Judge Seelhoff found that the decision of the Secretary of State was not in accordance with the law, because she had failed to properly assess the evidence in line with Appendix FM-SE.

3. The Secretary of State then appealed that decision, submitting that in view of the overriding objective of the Tribunal to handle appeals fairly, quickly and efficiently there was no point to the remittal. That was because, on the view of the drafter of the grounds, the Respondent had no prospect of success upon review by the Secretary of State.
4. The irony of those grounds was not lost on Mr Duffy who very sensibly withdrew them. He was quite right to do so, since it would be fairer, quicker and more efficient for the Secretary of State to actually apply her own guidance as set out in Appendix FM-SE, look at the evidence as a whole and consider whether to apply the 'evidential flexibility' procedure built in to that appendix at paragraph D.

### **Decisions**

5. The decision of the First-tier Tribunal contains no error of law and it is upheld.
6. I make no direction as to anonymity. None was in place before the First-tier Tribunal and I was not asked to make one in the Upper Tribunal.

Deputy Upper Tribunal Judge Bruce  
25<sup>th</sup> July 2014