



IAC-AH-SC-V1

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

Appeal Number: OA/10982/2013

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 3 November 2014

On 5 November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVID TAYLOR

Between

**SIVANAYAKI SUBRAMANIAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Adama-Adams of Counsel

For the Respondent: Mr P Armstrong, Home Office Presenting Officer

DECISION AND REASONS

1. The Secretary of State is the appellant to this appeal but, for the sake of consistency, I refer to her as the respondent (as she was in the First-tier Tribunal) and to the original appellant as such.
2. The appellant is a 78 year old female citizen of Sri Lanka. In a determination promulgated on 30 July 2014 in the First-tier Tribunal, Judge Raymond allowed her appeal against the Entry Clearance Officer's decision refusing her entry clearance to the United Kingdom for settlement as the adult dependent relative of her son. Her son is her sponsor and is a British citizen who is now resident and settled in the UK.

3. The judge heard oral evidence from the sponsor but at [24] of the determination he found that the sponsor was not a credible witness. He noted that there were two conflicting medical reports as to the health of the appellant and found that “the most credible explanation is that the sponsor has obtained a report from Dr Nagarajah which is an exaggeration”. At [25] the judge concluded in the following terms:

“However, despite the despite lack of credibility of the sponsor, who I consider has inappropriately sought to exaggerate and embellish upon the physical and mental health of his mother. The fact remains that the appellant was born in 1936, so as to presently be 78 years of age. She is also a widow. Whose two sons live in the UK, being the sponsor, and in Switzerland. By virtue of her age alone, she will as a widow, without immediate family at hand to provide support, become increasingly vulnerable. Her brother, who may well live nearby and would have been of some support for her, was himself born in 1944, thus presently being 71 years of age, and therefore himself no doubt needing the certainty of increasing support from his own family. I accept, despite my view of his general credibility turning principally upon the claimed medical evidence, that the sponsor’s four visits to Sri Lanka in the last two years will have been largely motivated by his naturally increasing concerns over his mother’s ability to cope as an elderly widow. I therefore accept that given the age alone of the appellant, combined with her being a widow, it is reasonable to expect that her two sons in Europe, one being the sponsor who is an economically viable person settled in this country, are best placed to undertake the responsibility of her long-term personal care.”

4. Permission to appeal was granted by First-tier Tribunal Judge T R P Hollingworth on 19th September 2014 as follows:

“Seen alongside an adverse credibility of the UK sponsor (at paragraph 24) and wholly inconclusive medical evidence, the judge has attached undue weight to the appellant’s age and her claim not to have support in Sri Lanka as the basis for allowing the appeal under the Rules.”

5. I heard submissions from both representatives. The Presenting Officer relied on the grounds and, in particular, on the reasons given above for the granting of permission to appeal. In reply, Mr Adama-Adams urged me to find that there had been no error of law and that the judge was entitled to make the findings that he did notwithstanding the lack of credibility of the sponsor or of the medical evidence.
6. I am satisfied that the determination of the First-tier Tribunal did contain a material error of law such that it must be set aside in its entirety. The judge’s decision is wholly inconsistent with the specific findings that he made. He found the sponsor’s evidence to lack credibility. In relation to the medical evidence he himself said at [24] that “it is not possible to make any sense of the conflict between the two medical reports”. He then went on to conjecture what he regarded as “the most credible explanation”. But the burden of proof was on the appellant and, with

respect, it was not, without further evidence, for the judge to conjecture or seek to reconcile the two clearly conflicting medical reports. It is also clear from [25] that, without any independent evidence, the judge conjectured as to the support that the appellant's brother (who either lives with the appellant or very nearby) would be able to continue to give her.

7. The error of law is such that the determination must be set aside in its entirety. The evidence will need to be heard again and a decision taken under the appropriate parts of Appendix FM of the Immigration Rules. For that reason I have decided to remit the appeal to the First-tier Tribunal for hearing afresh.

Notice of Decision

8. The First-tier Tribunal determination contained an error of law (as set out above) and is hereby set aside in its entirety.
9. **I remit the appeal to the First-tier Tribunal (at Hatton Cross) to be heard afresh by any judge (other than Judge Raymond).**
10. No anonymity direction is made.

Deputy Upper Tribunal Judge David Taylor
3 November 2014