



IAC-FH-AR-V2

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

Appeal Number: OA/10105/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 4 November 2015
Prepared 4 November 2015**

**Decision & Reasons Promulgated
On 20 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**JEYASUTHA NAVARATHINARASA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mrs S Sreeraman, Senior Presenting Officer

For the Respondent: Mr A Gilbert, Counsel, instructed by Tamil Welfare Association (Romford Road)

DECISION AND REASONS

1. In this decision the Appellant is referred to as the Secretary of State and the Respondent is referred to as the Claimant.
2. The Claimant, a national of Sri Lanka, date of birth 28 February 1981, appealed against the Secretary of State's decision to refuse to grant entry clearance under paragraph 319L of the Immigration Rules HC 395 (The Rules) on 20 August 2014. Her out of country appeal came before First-tier Tribunal Judge A C Moler (the judge) who, in a decision dated 3 July

2015, allowed the appeal under the Rules on the basis that the Claimant had satisfied the criteria for entry clearance under paragraph 319L of the Rules.

3. The Claimant's claim was refused because she had not obtained the necessary English language requirements under the Rules. Before the judge a number of arguments were raised, but not by Mr Gilbert, as to why the Claimant succeeded under the Rules. The judge simply failed to apply the correct approach which was to be satisfied that the Appellant had, on a balance of probabilities, met the relevant requirements of the Rules for the purposes of an acceptable English language test. Mr Gilbert, for the Claimant, correctly accepted that the judge's decision on this matter was in error of law albeit now the Claimant has met and passed the relevant test requirements.
4. In the Grounds of Appeal to the First-tier Tribunal it was clear that the issue of Article 8 was raised but also that the judge in the decision of 27 June 2015 as signed did not address Article 8 ECHR save to say it did not require consideration outside of the Rules because the Claimant had satisfied the requirements of paragraph 319L of the Rules.
5. The pity of that aspect of the decision is quite simply that it left open the issue of Article 8 ECHR. It was clear to me that had the judge not made the error in relation to the English language test qualification he would have had to go on and decide whether or not Article 8 should be looked at outside the Rules. In the circumstances therefore I am satisfied that the Secretary of State's grounds are right in challenging the judge's decision under the Rules.
6. To that extent therefore the Original Tribunal's decision cannot stand and the following decision is substituted. The appeal of the Secretary of State is allowed as set out below.
7. However in relation to the Article 8 claim, it seemed to me that that having been raised it needed to be addressed. Whilst I express no view whatsoever on the likely outcome, on which I have formed no conclusion at all, I was satisfied that the matter did need to be addressed because, at least *prima facie*, it appeared that there may be exceptional circumstances which enabled the case to be looked at outside of the Rules under Article 8 ECHR. Those issues are a matter for another day.

Notice of Decision

8. I am satisfied that the Original Tribunal's decision cannot stand.

The appeal is allowed to the extent that the Article 8 ECHR claim will have to be decided.

Directions

- (1) Remake in the Upper Tribunal.
- (2) Before Deputy Upper Tribunal Judge Davey if available
- (3) List for 1 hour
- (4) Tamil interpreter required
- (5) Any further documents bearing in mind this is an out of country appeal and the relevant date for consideration will be the date of the Secretary of State's decision
- (6) Any further material being advanced in support of the Article 8 claim to be served not less than 10 working days before the further hearing to remake the decision.

8. No anonymity direction is made nor required.

Signed

Date 13 November 2015

Deputy Upper Tribunal Judge Davey