



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

Appeal Number: OA/20572/2013
OA/20573/2013
OA/20575/2013

THE IMMIGRATION ACTS

Heard at Field House

**Decision and Reasons
Promulgated**

On 13 July 2015

On 14 July 2015

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

ENTRY CLEARANCE OFFICER (CHENNAI)

Appellant

and

**ARUNATHATHY SANTHARAJA
(and two child dependents)
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms S. Saifolahi, counsel instructed by Jein Solicitors
For the Respondent: Miss A. Everett, Home Office Presenting Officer

DECISION AND REASONS

1. For the sake of continuity I will refer to the parties as they were before the First-tier Tribunal but technically the Secretary of State is the appellant in this appeal before the Upper Tribunal.
2. The appellant is a citizen of Sri Lanka whose date of birth is 10 April 1975. She has two dependent children. She appealed against the respondent's

decision to refuse entry clearance as the spouse and dependent children of a person who is present and settled in the UK.

3. First-tier Tribunal Judge Shepherd allowed the appeal in a decision promulgated on 16 January 2015. The respondent applied for permission to appeal against the decision, which was granted by the First-tier Tribunal on 04 March 2015. The grounds of appeal can be summarised as follows:
 - (i) The First-tier Tribunal Judge erred in finding that the photograph the appellant admitted she altered was not a false document. The fact that the photograph had been altered to show her with her husband quite clearly showed an intention to deceive the Entry Clearance Officer (“ECO”): *AA (Nigeria) v SSHD* [2010] EWCA Civ 773.
 - (ii) The First-tier Tribunal Judge made inadequate findings relating to the adequacy of accommodation that were not supported by the evidence. There was no evidence from the landlord of the property to confirm that the appellant could live there. There was no evidence to support the First-tier Tribunal Judge’s conclusion that there was no reason to suppose that the landlord would object.
 - (iii) The First-tier Tribunal Judge erred in finding that there were ‘exceptional circumstances’ to exempt the appellant from the English language requirement. It was not clear why the fact that the appellant has lost a limb would render her incapable of learning English or being able to study for an exam. Nor would the fact that she suffers from depression stop her from learning English. There was no documentary or medical evidence to support the First-tier Tribunal Judge’s findings.
4. The matter comes before the Upper Tribunal to determine whether the First-tier Tribunal decision involved the making of an error of law.
5. I heard submissions from both parties, which have been noted in my record of proceedings and where relevant are incorporated into my findings.

Decision and reasons

6. After having considered the grounds of appeal and oral arguments I am satisfied that the First-tier Tribunal decision did not involve the making of an error of law.
7. In support of the application the appellant submitted a photograph, amongst others, that purported to show her and her husband together. As part of the same set of photographs she also included an original photograph of herself beside a flower arrangement. It is quite clear from the distinctive nature of the photograph that the photograph of the appellant with her husband had been altered. The appellant and the sponsor both admitted this in their evidence before the First-tier Tribunal.

The appellant explained that their wedding photographs had been destroyed and she wanted a photograph showing her and her husband together at a time before she lost her leg. In paragraph 42 of the decision the First-tier Tribunal Judge considered the appellant's explanation and found that there had been no intention to deceive.

8. In paragraph 56 of the decision the First-tier Tribunal Judge noted that the respondent's representative said she was "sympathetic to the appellant in this regard and that it was understandable that she put together a "collage" photograph in the circumstances". She noted that the respondent's representative said that it was "highly debatable" whether or not there was any intention to deceive and left the matter for the Tribunal to decide. In light of this the First-tier Tribunal Judge's findings in paragraph 62(i) are entirely sustainable. The First-tier Tribunal Judge found the appellant's explanation to be credible and in light of the fact that the appellant had also submitted the original photograph it is difficult to see how one could conclude that she was seeking to deceive the ECO. While the photograph was manufactured to some extent it could not be said to be a 'false' document within the meaning identified by the Court of Appeal in *AA (Nigeria)* because the requisite element of intent to deceive was not present. For these reasons I conclude that the First-tier Tribunal Judge's findings were open to her on the evidence and do not disclose a material error of law.
9. The second ground of appeal relates to the First-tier Tribunal Judge's findings regarding the accommodation. Miss Everett accepted that the immigration rules contain no strict evidential requirements relating to accommodation. There is no evidential requirement for the appellant to produce an accommodation report or to show that the sponsor's landlord has given permission for her to live there. The test contained in the rules is whether "adequate accommodation" is available. The First-tier Tribunal Judge found the sponsor to be a credible witness [59]. There was supporting evidence in the form of a tenancy agreement. The sponsor's evidence was that it was a three bedroom house. The First-tier Tribunal Judge was satisfied that the sponsor was the sole occupant [62(iv)]. In light of this it was open for the First-tier Tribunal Judge to conclude that an accommodation report or a letter from the landlord was not necessary. A three bedroom house is adequate accommodation for a married couple with two teenage children for the purpose of the room standards of the Housing Act 1985. It was therefore open for the First-tier Tribunal Judge to find that the accommodation was adequate for the purpose of the immigration rules. For these reasons I conclude that her findings disclose no material error of law.
10. The third ground of appeal relates to the First-tier Tribunal Judge's findings regarding the English language requirement. The exceptions contained in paragraph E-ECP.4.2 of Appendix FM include those with a physical or mental disability but in this case the First-tier Tribunal Judge considered that the appellant's circumstances, taken as a whole, were sufficient to

come within the third exception because they could be described as 'exceptional'. The respondent accepts that the appellant has certain disabilities but argues that they did not in themselves preclude her from learning English or taking an English language test and as such the First-tier Tribunal Judge's findings were unlawful. I am not aware of and was not referred to any guidance or authority on how the requirement should be interpreted.

11. In paragraph 41 of the decision the First-tier Tribunal Judge noted that there was medical evidence to show that the appellant was injured by a shell blast in April 2009 and as a result her right leg was amputated above the knee. Her mother and sister died in the same attack [40]. A further letter from the Divisional Hospital confirmed that she had an artificial leg but was unable to work or undertake most day to day activities. In paragraph 44 the First-tier Tribunal Judge noted the sponsor's evidence. He said that his wife was very depressed and she found it difficult to talk about things on the telephone. He felt that it was beyond her to study at the moment because of her current mental state. Whenever he mentioned the need to study for the English language qualification she would cry. In paragraph 55 the First-tier Tribunal Judge noted the submissions made by the respondent's representative who acknowledged that the appellant had suffered terrible injuries as a result of the war and left it to the First-tier Tribunal Judge to decide whether that was sufficient to come within the exemption.
12. The First-tier Tribunal Judge made clear findings addressing the reasons for refusal in paragraphs 63-65 of the decision. She found that the evidence showed that the appellant had lost the ability to earn a living and must therefore be largely dependent on others for support. She was likely to be "at a distinct disadvantage" when it came to studying for and preparing to take an exam in a foreign language. She also concluded that the appellant's depression was a "compelling element".
13. While there will be some clear cases where a physical or mental disability may preclude a person from studying for and taking an English language test the exceptions also recognise that there might be other cases where 'exceptional circumstances' may still exempt an applicant from the requirement. In most cases an applicant will be expected to provide an English language test certificate in support of the application. But the immigration rules must still be sufficiently flexible to allow for family life to continue when there is a good reason why the English language requirement has not been met and an applicant meets the other requirements of the rules. The First-tier Tribunal Judge took into account the traumatic events that have affected the appellant both physically and emotionally, as well as the practical disadvantages of her disabilities, which have rendered her unable to work and dependent on others for day to day support. She made clear that she had taken into account those factors cumulatively. I conclude that the First-tier Tribunal Judge's finding that the circumstances were 'exceptional' for the purpose of exemption

was open to her on the evidence. The respondent may disagree with the finding but it could not be said to be irrational or perverse and discloses no material error of law.

14. For the reasons given above I conclude that the First-tier Tribunal decision did not involve the making of an error of law. The First-tier Tribunal decision shall stand.

DECISION

The First-tier Tribunal decision did not involve the making of an error on a point of law.

The First-tier Tribunal decision shall stand.

Signed
14 July 2015

Date



Upper Tribunal Judge Canavan