



IAC-TH-WYL-V1

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

Appeal Number: OA/20614/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 8 July 2015**

**Decision &  
Promulgated**

**On 13 July 2015**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHAERF**

**Between**

**ENTRY CLEARANCE OFFICER - CHENNAI**

**and**

**ANUSIYA RAVISHANKAR  
(NO ANONYMITY DIRECTION MADE)**

Appellant

Respondent

**Representation:**

For the Appellant: Ms E Savage of the Specialist Appeals Team

For the Respondent: No appearance

**DECISION AND REASONS**

**The Respondent**

1. The Respondent to whom I shall refer as the Applicant is a citizen of Sri Lanka, born on 5 November 1979. On 23 October 2013 the Appellant (the ECO) refused her application for leave to enter as the wife of Nadesu Ravishankar. The Respondent doubted the subsistence of the marriage and found the Applicant had failed to provide sufficient documentary

evidence in compliance with the requirements of Appendix FM-SE of the Immigration Rules.

2. On or about 12 November 2013 she lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). The grounds assert the marriage was arranged as was customary in her culture. The Applicant had submitted evidence of her husband's earnings and his savings. Additionally the claim under Article 8 of the European Convention was maintained.

### **The First-tier Tribunal Proceedings**

3. By a decision promulgated on 12 March 2015 Judge of the First-tier Tribunal Newberry allowed the Applicant's appeal. He was satisfied the Applicant's husband was earning sufficient to meet the requirements of the Immigration Rules and that the Applicant's marriage was genuine and subsisting.
4. The ECO sought permission to appeal on the basis that the Judge had addressed neither the ECO's concern about the adequacy of the accommodation available for the Applicant nor the ECO's claims the Appellant had failed to meet the requirements of Appendix FM-SE of the Immigration Rules.
5. On 7 May 2015 Judge of the First-tier Tribunal Osborne granted the ECO permission to appeal.

### **The Upper Tribunal Hearing**

6. Nobody attended for the Applicant and her solicitors were telephoned and subsequently sent a letter to the Tribunal stating the Applicant is willing to make a fresh application for entry clearance and in such circumstances they were not representing her at the hearing in the Upper Tribunal. I did not consider this amounted to a withdrawal of the original appeal or concession to the ECO.
7. I was satisfied that notice of the time, date and place set for the hearing had been properly given to the Applicant and her solicitors in accordance with the Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) and that in all the circumstances it was appropriate to proceed with the hearing in the absence of the Sponsor or any representative for the Applicant.
8. Ms Savage relied on the grounds. The Applicant had been refused at least in part because she had failed to submit the requisite documentation required by Appendix FM-SE of the Immigration Rules. The Judge had erred in not addressing this issue. He had also erred in not adequately considering the issue of the accommodation available to the Applicant and her husband. The ECO in the decision had expressly identified certain concerns about the adequacy of the accommodation (possible overcrowding) and whether the mortgage payments secured on the

property had been maintained. The Judge's decision contained errors of law such that it should be set aside.

### **Findings and Consideration**

9. The Judge erred in law in failing to address the evidence or lack of evidence in relation to the Applicant's compliance or non-compliance with the requirements of Appendix FM-SE and the concerns which the ECO had expressed about the adequacy of the available accommodation and whether the mortgage account had been properly maintained. These amount to material errors of law.
10. The Applicant was aware of the ECO's concerns about the nature of the First-tier Tribunal's decision. She has failed to supply the documentary evidence required by Appendix FM-SE in relation to her husband's earnings and a report on the adequacy of her proposed accommodation and evidence that the mortgage payments on it have been properly maintained. The Rules require certain documents to be submitted even if other documentation not required by the Immigration Rules has been submitted which would be sufficient to establish on the balance of probabilities her husband's income. Additionally she has not provided the evidence about the adequacy of the accommodation or the conduct of the mortgage account. Evidence of all these matters would have been admissible before the Upper Tribunal under Section 85A(2) of the 2002 Act.
11. The original grounds of appeal included a generic reference to Article 8 of the European Convention but no evidence or submissions have been made for the Applicant on this point. In the circumstances and having regard to the statement by the Applicant's solicitors that she is willing to re-apply to the ECO for entry clearance, I set aside the First-tier Tribunal's decision and re-make the decision allowing the appeal of the ECO and dismissing the Applicant's appeal against the decision of the ECO to refuse her entry clearance.

### **Anonymity**

12. There was no request for an anonymity direction or order and I do not consider any is required.

### **NOTICE OF DECISION**

**The First-tier Tribunal's decision contained errors of law such that it should be set aside. I have re-made the decision and allow the appeal of the ECO and dismiss the Applicant's appeal on immigration grounds.**

Signed/Official Crest

Date 10. vii. 2015

Designated Judge Shaerf  
A Deputy Judge of the Upper Tribunal

**TO THE ECO: FEE AWARD**

The appeal of the Applicant has been dismissed so no fee award may be made.

Signed/Official Crest

Date 10. vii. 2015

Designated Judge Shaerf  
A Deputy Judge of the Upper Tribunal