



**Upper Tribunal  
(Immigration and Asylum Chamber)  
OA/06709/2013**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Determination**

**On 1 August 2014**

**Promulgated**

**On 6 August 2014**

**Before**

**Deputy Upper Tribunal Judge MANUELL**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**Mr KARITHIGEYAN SELVAPRAGASAM  
(NO ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mrs L Kenny, Home Office Presenting Officer

For the Respondent: Mr P Saini, Counsel

(instructed by Genga & Co Solicitors)

**DETERMINATION AND REASONS**

*Introduction*

1. The Appellant (the Secretary of State) appealed with permission granted by First-tier Tribunal Judge Saffer on 30

**Number: OA/06709/2013**

January 2014 against the determination of First-tier Tribunal Judge Thanki who had allowed the Appellant's appeal in a determination promulgated on 9 January 2014. The determination covered both the Appellant and his sister. The brother's appeal was allowed under Appendix FM by the judge.

2. The Appellant is a national of Sri Lanka, born on 7 November 1991, who had sought leave to enter the United Kingdom for settlement as an adult dependant child under Appendix FM, which was refused by the Entry Clearance Officer, Chennai on 15 February 2015. The Appellant's mother had been granted leave to enter on review by the Entry Clearance Manager.
3. Permission to appeal was granted by First-tier Tribunal Judge Saffer because he considered that it was arguable that care was available for the Appellant in Sri Lanka as although his mother had been granted leave to enter the United Kingdom she had elected to remain with the Appellant. Additionally, the judge had not considered what care alternatives existed.

*Submissions - error of law*

4. Mrs Kenny for the Appellant relied on the grounds of onwards appeal on which permission to appeal had been granted. The son's appeal could not be bolted on to that of the mother. The mother did not have to leave Sri Lanka. It was all a question of choice and the judge had not weighed up the evidence adequately.
5. The tribunal did not need to call on Mr Saini.
6. The tribunal indicated that it found no material error of law and reserved its determination which now follows.

*No material error of law finding*

7. The grant of permission to appeal by the First-tier Tribunal was in the tribunal's view generous. As the judge made clear in his determination, after ignoring the irrelevant and peripheral material, there was independent evidence deserving of full weight that the Appellant was incapable of caring for himself and round the clock care: [24]. The

**Number: OA/06709/2013**

Entry Clearance Officer had identified no system of welfare state type care in Sri Lanka nor any charities engaged in the accommodation and care of persons of the level of need and dependency of the Appellant. The Appellant had in contrast produced country background evidence concerning the position of disabled persons in Sri Lanka. It is also well known that the care of seriously disabled adults is far more difficult than the care of seriously disabled children. It is impossible to see how the judge could have reached any conclusion other than that he set out in his determination.

8. The Appellant's grounds of onwards appeal were fallacious. While it is true that the Appellant's mother did not have to leave Sri Lanka, once the Entry Clearance Manager had in fact granted her leave to enter the United Kingdom, the only logical outcome was that the mother would travel to the United Kingdom to join her husband. That was the purpose of her application and there was no suggestion that the marital bond had broken down. There was no evidence that anyone else in Sri Lanka would have been willing to take the slightest interest in the Appellant, other than his sister, but she was pursuing an independent life and was away at university. It would be totally unreasonable to expect her to assume the 24 hour care of her brother after her mother's departure. The weight which the judge attached to the mother's unwillingness to leave Sri Lanka without her son (see [25]) was plainly as an indication of the extent of the son's inability to care for himself.
9. The fact that the whole situation of family separation was based on family choice was not relevant where the Appellant satisfied the stringent requirements of Appendix FM.
10. The tribunal finds that there was no material error of law in the determination and there is no basis for interfering with the judge's decision.

**DECISION**

The making of the previous decision did not involve the making of an error on a point of law and stands unchanged

**Signed**

**Dated**

**Number: OA/06709/2013**

**Appeal**

**Deputy Upper Tribunal Judge Manuell**