



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

Appeal Number: HU/03592/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 14 December 2018**

**Decision & Reasons
Promulgated
On 15 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

and

**SHANTHINI EDIRIMANASINGHE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Representation:

For the Appellant: Mr Z Chaudhri, McKenzie-Friend.

For the Respondent: Mr I Jarvis, Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellant is a citizen of Sri Lanka who applied for leave to remain under Appendix FM. It was refused and she appealed and following consideration of that appeal on papers, and in a decision promulgated on 25 April 2018 Judge of the First-tier Tribunal Anthony dismissed her appeal.
2. The Appellant sought permission to appeal. It was initially refused but a renewed application was subsequently made and granted by Upper

Tribunal Judge Frances on 12 November 2018. Her reasons for so granting were: -

“1. The Appellant appeals against the decision of First-tier Tribunal Judge Anthony dismissing her appeal against the refusal of leave to remain on human rights grounds. The appeal was decided on the papers at the Appellant’s request.

2. The English language certificate was not before the Judge. It was however submitted to the Tribunal before the decision was made and promulgated. It is arguable that there has been a procedural irregularity which arguably lead to an error of law.

3. Although the Appellant could not satisfy the Immigration Rules, having failed to submit an English language certificate with her application, it is arguable that she could satisfy the Rules at the date of the First-tier Tribunal decision and therefore the refusal of leave was arguably disproportionate. Had the judge been aware of the English language certificate, he may well have come to a different conclusion.”

3. Thus, the appeal came before me today.
4. At the hearing it was established that prior to promulgation of the Judge’s decision a Trinity College London exam report and Trinity College London certificate had been filed with the Tribunal. Those documents confirm the Appellant passing the examination in spoken English Grade 3.
5. In the circumstances Mr Jarvis accepted that in not considering them there was a procedural error within the Judge’s decision and that it should be set aside and that the appeal should be remade and allowed.
6. That is an analysis that I share.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside that decision.

I remake the decision in the appeal by allowing it.

No anonymity direction is made.

Signed

Date: 4 January 2019

Deputy Upper Tribunal Judge Appleyard

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a full fee award.

Signed

Date: 4 January 2019

Deputy Upper Tribunal Judge Appleyard