



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

Appeal Number: IA/06042/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 5th December 2014**

**Determination
Promulgated
On 17th December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ANUSHKA ERANDA DAMPE ARACHCILAGE

Respondent

Representation:

For the Appellant: Mr C Avery, Senior Home Office Presenting Officer
For the Respondent: Mr A Stedman, Counsel, instructed by VMD Solicitors,
Ilford

DETERMINATION AND REASONS

1. The Respondent is a citizen of Sri Lanka whose date of birth is recorded as 12th May 1985.
2. On 11 November 2009, he arrived, lawfully, in the United Kingdom, as a student. He was joined by his wife but unfortunately she became terminally ill and died on 3 June 2013 (not 2014 as stated in the determination of the First-tier Tribunal). Following the death of his wife, he

made application for leave to remain, outside the rules, on compassionate grounds so as to organise his affairs. He was granted three months leave from 6 September 2013 to 4 October 2013. However when, on 4 October 2013, he applied for a further to remain, the application was refused.

3. He appealed. The appeal was heard by Judge of the First-tier Tribunal Herbert OBE on 3rd September 2014 sitting at Taylor House. Rather than deciding the merits of the appeal concluded with the following:- *“I therefore allow this appeal on the limited basis that it is remitted to the [Secretary of State] for a fresh decision to be made considering all the tragic circumstances outlined in the [Secretary of State’s] case.”*
4. When one reads the determination as a whole it is clear that the judge appreciated that in fact there was no basis upon which the appeal could be allowed; that is conceded by Mr Stedman because the Respondent could not make a further application whilst on “3C leave” without more. Indeed Mr Stedman was surprised that the determination did not “conclude” with the words, “I therefore dismiss the appeal” etc.
5. In the event the Secretary of State by notice dated 23rd September 2014 made application for permission to appeal to the Upper Tribunal. On 6th November 2014, permission was granted by Judge of the First-tier Tribunal Hollingworth. Thus the matter comes before me.
6. Given the concession, quite properly made, by Mr Stedman I find that there is the error of law contended for in the grounds, namely that the judge erred in law having regard to the case of Patel and Others v Secretary of State for the Home Department [2013] UKSC 57 because, against that guidance, and what is said with respect to s. 3C of the Immigration Act 1971, the judge seemingly allowed the appeal on the basis that the Respondent should be permitted a period of six months’ leave to pursue a six month student application.
7. In remaking the decision of the First-tier Tribunal I dismiss the appeal but still invite the Secretary of State to consider whether or not further leave should be granted given the truly exceptional circumstances in which this Respondent’s studies came to be interrupted. Whilst the Judge of the First-tier Tribunal was entitled to make a recommendation, it is, of course a matter for the Secretary of State whether or not she chooses to follow it.

Decision

The appeal of the Secretary of State to the Upper Tribunal is allowed. The decision of the First-tier Tribunal is set aside and remade such that the appeal to the First-tier Tribunal is dismissed.

Signed

Date 16th December 2014

Deputy Upper Tribunal Judge Zucker