



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

Appeal Number: HU/14622/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 8 November 2018**

**Decision & Reasons Promulgated  
On 26 November 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HILL QC**

**Between**

**MS SAROJINI DEVI SIVALOGANATHAN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Joseph Plowright, Counsel

For the Respondent: Ms K Pal, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal from the decision of First-tier Tribunal Judge Callow promulgated on 6 December 2017. There is a lengthy procedural history to this case which can be taken relatively shortly.
2. The appellant is a Sri Lankan national born on 12 March 1941. She was refused leave to remain by the Secretary of State dated 24 May 2016. An earlier judicial review action was compromised in August 2009 on the basis that the Secretary of State agreed to the terms of a consent order which included reconsideration of the appellant's human rights

application. The matter was reconsidered: however, the refusal decision was not communicated until 24 May 2016.

3. The grounds of appeal, seemingly settled by a legal representative, claim that the judge failed to give proper consideration to the issue of delay on the part of the Secretary of State. There is a letter running to five detailed paragraphs signed by the appellant and, I am told, drafted with the assistance of her son which deals with the background to this appeal.
4. The letter refers to the fact that the appellant is an elderly widow whose age is variously stated as 77 or 76. It deals with her immigration history and particularly the delay in dealing with these matters by the Secretary of State.
5. The issue of delay was expressly considered by the First-tier Tribunal Judge. I have been taken to the respondent's bundle and to page A1 where a firm of solicitors called Wakes makes reference to the firm previously instructed namely the Phoenix Partnership. In a document headed Statement of Additional Grounds at pages B7 to B8 the following appears  

“Please further note as explained in the attached covering letter the appellant's former legal representatives Phoenix Partnership Solicitors have allegedly ceased practising from September 2013. Please therefore forward all future correspondence either to our client directly or to us as her current legal representatives.”
6. I was then taken to an extract of a summary of the appellant's immigration history compiled by a caseworker within the Home Office and to a paragraph at page B2 of the respondent's bundle which refers to the applicant being served with IS151A removal papers placing her on monthly reporting. I am told, and I have no reason to doubt, that the reporting in due course went from once a month to three monthly and subsequently changed to six monthly.
7. I have also been taken to a witness statement from Mrs Mythily Murukathash, a solicitor in the employ of Phoenix Partnership Solicitors, which sets out the history of that firm acting for the appellant.
8. It is clear from looking at the decision that the issue of delay was firmly in the judge's mind at the time it was made. I am told by Mr Plowright, who then acted for the appellant as he does before me, that little if any of the oral evidence was directed to this issue of delay and the change in representation.
9. Paragraph 19 sets out the considerations which the judge had in mind and makes reference to the case of the **R (on the application of S) v Secretary of State for the Home Department [2007] EWHC 51 (Admin)** and whether there were repeated reminders or requests emanating from the solicitors.

10. This narrow ground of appeal is advanced in the basis that the appellant did not go underground but remained very much on the Home Office's radar by dint of the reporting conditions first monthly then three-monthly then six-month. In addition, she believed that her solicitors were pursuing her application with vigour.
11. There is precious little evidence on the appellant's subjective belief. There has been no application to adduce fresh evidence today for the purposes of the disposal of this appeal. It is said that this was not merely a slow decision but one which breaches the terms of the consent order whereby the Secretary of State undertook to give the matter reconsideration. To my mind nothing turns on that distinction.
12. The appellant has always known that her continued residence in this country has been precarious. The judge properly examined the issue of delay. I can see nothing in the factors relating to the change of representation which might have affected the outcome. The decision to which the judge came cannot be criticised.
13. There is no error of law in this decision. Notwithstanding the able submissions of Mr Plowright, this appeal fails.

### **Notice of Decision**

- (1) Appeal dismissed.
- (2) No anonymity direction is made.

Signed *Mark Hill*

Date

19 November 2018

Deputy Upper Tribunal Judge Hill QC