

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF  
SRI LANKA**

*In the matter of an application for mandates in the  
nature of Certiorari and Mandamus in terms of Article  
140 of the Constitution of the Republic of Sri Lanka.*

**CA/WRIT/299/2022**

Ms. Kayleigh Frazer  
972/4, Kekunagahawatta Road,  
Akuregoda,  
Battaramulla.

**Petitioner**

1. Commissioner General of Immigration  
Department of Immigration and Emigration,  
Suhurupaya, Sri Subhuthipura,  
Battaramulla.
  
2. The Attorney General  
The Attorney General's Department,  
Colombo 12.

**Respondents**

**Before** : Sobhitha Rajakaruna J.

**Counsel** : Nagananda Kodituwakku for the Petitioner.  
Amasara Gajadeera, SC for the Respondents.

**Decided on** : 16.08.2022

**Sobhitha Rajakaruna J.**

Heard learned Counsel for the Petitioner in support of this application and the learned State Counsel who appears for the Respondents opposing this application.

The Petitioner in this application is seeking *inter alia* a mandate in the nature of a writ of certiorari quashing the purported deportation order issued on her by the Controller General of Department of Immigration and Emigration, Colombo, marked as 'X4'. The said 'X4' is a letter written by the said Controller General to the Petitioner to inform the Petitioner that her visa under MED/00298 had been cancelled. The Petitioner has been advised as per the said letter 'X4' to leave the country on or before 15<sup>th</sup> August 2022.

It is pertinent to observe at the outset whether any reasons have been submitted by the Petitioner establishing her rights to continue to stay in Sri Lanka despite the cancellation of her visa by letter marked 'X4'. On perusal of the Petition as well as the Affidavit of the Petitioner and also having heard the learned Counsel for the Petitioner, this Court observes that no reasons have been mentioned or averred by the Petitioner to establish her rights to continue to stay in the country.

The Petitioner has filed a motion on 16.08.2022, annexing a document marked 'X8' which refers to an alleged offence of rape. However, the learned Counsel for the Petitioner categorically indicates that the Petitioner had given instructions to Sri Lanka Police not to proceed with the complaint made by her to police on an alleged offence of rape. The learned Counsel's contention is that the Petitioner was compelled to do so due to various other reasons.

The Petitioner has not alleged any grounds such as legitimate expectation, necessity to take medical treatment or legal requirement of giving evidence or appearing in a pending case in a Court of law.

The learned State Counsel making submissions drew the attention of this Court to the Regulations made under the Immigrants and Emigrants Act No. 20 of 1948 (as amended) published in Government Gazette Notification No. 10,896 on 24.02.1956. In terms of the

Regulation No. 20(1), *it shall be a condition of every visa that the prescribed authority may, in his absolute discretion, cancel, vary or amend such visa or any term of condition specified therein.* By virtue of Regulation No. 22, *it shall be a condition of every resident visa that the prescribed authority may provide that the holder thereof shall not engage in any employment, whether paid or unpaid or in any trade or business during his stay in the country.*

The learned State Counsel divulges that the Controller General of Department of Immigration and Emigration has taken the decision in document marked 'X4', based on violation of such conditions of visa by the Petitioner.

The learned State Counsel submits that the impugned document 'X4' is not a deportation order as claimed by the Petitioner and she confirmed that no deportation order has been made up to date by the authorities against the Petitioner. Further, the learned State Counsel asserts that the Petitioner has suppressed various facts such as the type of visa that the Petitioner has been granted and the grounds considered for extending visa etc. The learned State Counsel argues that the Petitioner has no standing in this application as the current visa granted to the Petitioner has not been submitted to Court for the purpose of fuller and proper adjudication of this application.

At this stage the Court needs to draw attention to the decided Judgment in ***Laub vs. Attorney General and another in (1995) 2 Sri. L.R. 88*** wherein Ismail J. has held that the Controller has the sole discretion in the matter of issuing visas and of considering applications for extensions and an alien has no right to an audience before the Controller or Authorised Officer before he decides not to extend his visa. Ismail J. in the said judgement has referred to the following passage of Lord Denning M. R. in ***Schmidt vs. Secretary of State, Home Affairs 1969 2 Ch. D. 149, 171;***

*“He has no right to enter this country except by leave; and, if he is given leave to come for a limited period, he has no right to stay for a day longer than the permitted time. If his permit is revoked before the time limit expires, he ought, I think to be given an opportunity of making representations; for he would have a legitimate expectation of being allowed to stay for the permitted time. Except in such a case, a foreign alien has no right, - and I could add, no legitimate*

*expectation - of being allowed to stay. He can be refused, without reasons given and without a hearing once his time has expired, he has to go.”*

The learned State Counsel submits that the said judgement of Ismail J. has been followed even in CA/Writ/Application No. 308/2017 decided on 26.03.2021. The discretionary power exercised by the Controller of Department of Immigration and Emigration has been upheld in the Supreme Court case of *Ramasamy vs. A. E. G. Moregoda 3 NLR 115*.

Anyhow, I am of the view that in the absence of any reasons establishing the rights of the Petitioner to continue to stay in the country, I should not use my discretion to review the decision of the Controller of Department of Immigration and Emigration. Further, it is observed that the Petitioner has failed to submit sufficient grounds to invoke the writ jurisdiction of this Court.

Considering all the circumstances of this case, I take the view that the Petitioner has failed to submit a prima facie case warranting this Court to issue formal notice on the Respondents. Therefore, based on the arguability principles that should be adopted in respect of matters relating to issuance of notice in an application for judicial review, I proceed to refuse this application.

**Judge of the Court of Appeal**