

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 a Writ of Mandamus under
and in terms of Article 140 of the
Constitution.

CA/Writ No: 706/2023

Maheshwari kalyana Sundaram
No. 5, New Bloemendal Flats,
Kotahena,
Colombo 13.

PETITIONER

Vs.

1. Mr. I.S.H.J. Ilukpitiya

Controller General of Immigration and
Emigration & Commissioner for Registration
of Persons of Indian Origin,
Department of Immigration and Emigration,
“Suhurupaya”
Sri Subhuthipura Road,
Battaramulla.

- 1a. Ms. B.M.D. Nilusha Balasooriya

Controller General of Immigration and
Emigration (Acting) & Commissioner for
Registration of Persons of Indian Origin,
Department of Immigration and Emigration,
“Suhurupaya”
Sri Subhuthipura Road,

Battaramulla.

2. Satheesh Nadarajah

No. 5, New Bloemendal Flats,
Kotahena,
Colombo 13.

3. Mr. Tiran Alles

Minister of Public Security
Floor 14, Suhurupaya Road,
Subuthipura Road,
Battaramulla.

3a. Mr. Ananda Wijepala

Ministry of Public Security and
Parliamentary Affairs,
18th floor, 'Suhurupaya',
Battaramulla,
Sri Lanka.

4. Hon. Attorney General

Attorney General's Department,
Colombo 12.

RESPONDENTS

Before : **Hon. Rohantha Abeyesuriya PC, J.(P/CA)**

: **Hon. K. Priyantha Fernando, J.(CA)**

Counsel : Suwasthika Arulingam for the Petitioner

instructed by Ineka Hendawitharana.

P. Jayasuriya, S.C. for the 1st, 3rd, and 4th
Respondents.

Written Submissions on : 20.11.2025 for the Petitioner.

Supported on : 13.10.2025

Decided on : 19.01.2026

K. Priyantha Fernando, J.(CA)

The Petitioner, by way of Petition dated 4th December 2024, invoked the jurisdiction of this Court under and in terms of Article 140 of the Constitution seeking a Writ of Mandamus directing the 1st Respondent to issue a spousal visa to the Petitioner.

POSITION OF THE PETITIONER:

The Petitioner who is a citizen of India married the 2nd Respondent, a Sri Lankan citizen in August 2002. She has since been residing in this country since September 2002 on a spousal visa which was applied on her behalf by her husband, the 2nd Respondent. The Petitioner and 2nd Respondent have one child together. Since arriving in Sri Lanka, she has been a victim of severe domestic abuse at the hands of the 2nd Respondent and his mother. Furthermore, the Petitioner states that as she was not working, she was financially dependent on the 2nd Respondent to sustain herself and their child.

In or around 2006, the 2nd Respondent entered into a second marriage which was registered in 2013. The Petitioner later filed a complaint to the Fraud Bureau which resulted in the filing of the case bearing No. 70271/08/2022 in the Magistrate Court. The Petitioner continued to live with the 2nd Respondent's mother in the ground floor of the building, while the 2nd Respondent and his

second wife lived in the top floor. However he continued to physically abuse her, which led to the filing of the Domestic Violence case bearing No. 70253/05/DV against the 2nd Respondent and his mother, and obtained an interim protection order on 2nd June 2022. Furthermore, she was compelled to file a maintenance action in the Magistrate Court as she was financially dependent on the 2nd Respondent.

Following the institution of the cases mentioned above, the 2nd Respondent refused to give the consent letter necessary to obtain the spousal visa for the year 2022-2023. The Petitioner consulted the 1st Respondent seeking a spousal visa despite the lack of a consent letter. However, the 1st Respondent refused on the basis that the consent letter was a vital document to obtain spousal visa. Instead, the 1st Respondent advised her to obtain a Dependent's visa on the basis that her son is residing in the country. The Petitioner did so and upon its expiry in 2023 she was of the view that her son would not consent to extend her dependency visa as he also became violent towards her. This compelled her to file a police complaint against her son. The Petitioner contends that having been granted a spousal visa from 2002 to 2022, and residing in the country for over 20 years, she has a legitimate expectation that the 1st Respondent will use his discretion to enable her to reside in Sri Lanka.

POSITION OF THE 1ST RESPONDENT:

The 1st Respondent in submission listed several factors that are taken into consideration when making the decision to grant visa, of which the letter from a spouse expressing consent to grant a residence visa for their foreign spouse is one such factor. This is reflected in the guidelines stipulated in the Migration Control Manual which is to be followed in instances as these. The Respondent hence informed the Petitioner of the impossibility to grant a spousal visa without a consent letter.

In relation to the issue of obtaining a Dependent's visa, contrarily to the submissions of the Petitioner, the Respondent submitted that it is not necessary to obtain the consent of the dependent, i.e the Petitioner's son in this instance. The Respondent states that the Petitioner would be required

to pay the relevant dependent visa fee, upon which the visa under the ‘Guardian of a Sri Lankan Citizen’ category can be granted to her.

Furthermore, the Respondent specifically contends that as Controller General he is not required to investigate the status of the marriage but is merely required to hold a consent letter from the spouse.

SUBMISSIONS OF THE PETITIONER

In response to the arguments of the Respondent, the Petitioner submitted that the Gazette No. 2360/24 dated 27.11.2023 marked as 1R1 does not stipulate any document as mandatory. The said gazette has not been in existence at the time of denying the Petitioner’s spousal visa. Furthermore, it is contended that there is no statutory requirement in the Immigrants and Emigrants Act No. 42 of 1998 or in the Sri Lanka Migration Control Manual.

The Petitioner drew attention to Section 14(3) of the Immigrants and Emigrants Act No 42 of 1998 and contends that it is the only section which allows the office of the 1st Respondent to prescribe ‘conditions’ for the extension for the extension of visas beyond 2 years.

The Petitioner relied on Section 36(iv) of the manual which sets out that “unless the marriage is invalidated by a court of law, the spouse is entitled to spouse visa”. Section 36(iv) of the Sri Lanka Migration Control Manual reads as follows:

“Spouses of Sri Lankans and dependent children are normally given residence visas upon application provided evidence is available that the Sri Lankan spouse has enough financial means to maintain the dependents. Residence visas issued on spouse criteria will lapse if the marriage is invalidated by a court of law...”

The requirement is that the spouse provides consent and proof that he is able to maintain the dependents. In support of the said requirement the Petitioner contends that she had submitted evidence to the 1st Respondent of having applied to obtain a maintenance order against the 2nd Respondent and subsequently obtained an interim maintenance order.

Furthermore, the Petitioner relied on the legal maxim '*lex non cogit ad impossibilia*' (the law does not compel the impossible) and cited several cases in which this maxim has been used; The Young Men's Buddhist Association v Azeez and another [(1995) 1 SLR 237], C.A Case No. 203/2002 Upali Palitha Mahanama v Wijayahenagedara Sumanawathie decided on 25.05.2018, CA/WRITT/533/2023 Nikhil Trilokekar and others v Commissioner of Labour and others decided on 15.05.2025, Saman v Leeladasa and another [(1989) 1 SLR 1]. In relying on the maxim, the Petitioner argued that the law cannot expect from her a legal impossibility in the form a consent letter to pay maintenance from the 2nd Respondent and that a court maintenance order requiring the 2nd Respondent to do so should be considered sufficient.

Further, the Petitioner reiterated the importance and relevance of legitimate expectation in the instant case. The Petitioner contended that having been residing in this country for over 20 years on spousal visas, a legitimate expectation has accrued unto her by the State that on the condition that her marriage was valid she would be granted spousal visa.

Finally, the Petitioner put forth the issue she faced when attempting to leave the country to visit her mother who had fallen ill in India. The Petitioner states that she was informed by the 1st Respondent's office that she would be required to pay a fine of Rs. 155,000/- for illegally residing in the country without a visa. However, at the time the Petitioner stated that she was in possession of a court order enabling her to legally reside in the country.

ANALYSIS AND CONCLUSION:

The proceedings of this case dated 20th November 2023 which relates to issuing of formal notice to the Respondents succinctly dealt with the reasons as to why the Petitioner is entitled for spousal visa although there is no consent letter from the Petitioner's husband. As this Court has already observed there is no provision in the Immigrants and Emigrant's Act No. 42 of 1998 (as amended) to set out the conditions for spousal visa.

Section 14 of the Immigrants and Emigrants Act states:

“(1) A visa may be granted by the prescribed authority for such period, not exceeding two years, as may be specified in the visa.

(2) A visa may, with the approval of the Minister, be granted by the prescribed authority for such period, exceeding two years but not exceeding five years, as may be specified in the visa.

(3) The period specified in any visa may be extended by the prescribed authority from time to time, for such period and subject to such conditions as may be prescribed, upon application made to that authority in that behalf. Where the authority which granted the visa obtained, by reason of subsection (2) of this section, the approval of the Minister before making the grant, such authority shall before extending the visa obtain in like manner the approval of the Minister.

(4) The fact that a person is in Sri Lanka for the time being shall not prevent or be construed to prevent the grant or issue in his case of a visa or endorsement, or the extension in his case of the period specified in such visa or endorsement”.

The Act does not explicitly give powers to the 1st Respondent’s Office to provide guidelines under which the visa is initially issued. Only when a visa is sought to be extended under Section 14(3) does the State allow for ‘conditions’ to be prescribed. The only document which was produced by the State setting out the regulations for spousal visa is a Manual which titled ‘Sri Lanka Migration Control Manual’ published in 1993.

Section 36 (iv) of the said Manual provides as follows:

*“Spouses of Sri Lankans and dependent children are normally given Residence Visas upon application provided **evidence is available that the Sri Lankan spouse has enough financial means to maintain the dependents.** Residence Visas issued on spouse criteria will **lapse if the marriage is invalidated by a court of law.** The death of a spouse is no reason for the invalidation of Residence visa. Sri Lanka follows a patriarchal system; hence Residence visas are normally granted only to female spouses in Sri Lanka” (the emphasis was added)*

Hence, according to Section 36 (iv) of the Sri Lankan Migration Control Manual:

(a) Evidence must be provided that the spouse has enough financial means to maintain dependents.

(b) The visa will only lapse if the marriage is invalidated by a court of law.

In the instant case, the Petitioner has provided evidence of applying to Court for a maintenance order from the 2nd Respondent and subsequently obtained an interim maintenance order. She has a marriage in force and it is yet to be invalidated by a Court of Law.

Another Section named ‘Applications’ is found at pages 27 and 28 of the said Manual where the following is mentioned.

“In the case of a claim for a Residence Visa on spouse criteria, the following documents should be submitted:

- (a) Passport of the applicant. There should be an indication of the person on whose right she is claiming a Residence Visa*
- (b) Passport of the Sri Lankan husband with photostat copies of pages 1 to 4 of the document*
- (c) Letter from the husband consenting to maintain her in Sri Lanka*
- (d) Proof of income of the husband”.*

In the instant case, the Petitioner has provided an interim Maintenance Order as proof of the fact that the 2nd Respondent is compelled to maintain her through a Court Order. That should have sufficiently met the requirement needed for the renewal of the spousal visa. This Court cannot expect the Petitioner to do the impossible. It is seen that the 1st Respondent had expected the Petitioner, a victim of violence to bring a ‘consent letter’ from the 2nd Respondent husband (the perpetrator) knowing very well that he would never give her such letter.

Moreover, a consent letter is not required under the law or the Manual produced by the State. The impossibility of producing such letter has been already recognized by this Court when this matter was taken for support on 20th November 2023. The proceedings are reproduced as follows:

*“The Petitioner has filed a domestic violence application in the Magistrates Court of Hulftsdorp and she has also made a complaint to the Fraud Bureau regarding bigamist marriage committed by her husband and a case on the bigamist marriage is pending before the Magistrates Court of Hulftsdorp. **Consequently, this Court***

observes that it is practically impossible for her to submit a consent letter from her spouse". (the emphasis was added)

It is considered view of this Court that the Petitioner should not have been expected to produce a document which is impossible to produce, when, according to the Sri Lankan Migration Control Manual, she had a valid marriage and produced documents to prove that her husband (2nd Respondent) was paying her maintenance upon a Court order.

WAS A LEGITIMATE EXPECTATION CREATED FOR THE PETITIONER?

It was contended that a legitimate expectation was created for the Petitioner by the State that as long as she remained validly married, the 1st Respondent would grant her a spousal visa.

In 'Principles of Administrative Law in Sri Lanka' by Dr. Sunil F.A. Cooray (Fourth Edition- Volume 1) at page 504, Dr. Sunil Cooray writes as follows:

"Although the duty to act judicially will now be implied where an existing license is to be withdrawn or cancelled, on the basis that the license holder will on cancellation lose his rights and privileges under the license, the question arises whether a licensing authority has an implied duty to act judicially and here an applicant for a new license before deciding to refuse to grant it. The position has been authoritatively analyzed as follows in 1978 by an English Judge (Megarry V.C. Mcinnes vs. Onslow Fane (1978) 2 AER 211: (1978) 1 WLR 1520 cited by Thambiah J. in Jayasena vs. Punchiappuhamy (1980) 2 SLR 43, Vythialingam J. in Dayaratne vs. Bandara (1978) 1983 Vol 1 Part 1, BALJR 23, 29)

"First, there are what may be called the forfeiture cases. In these there is a decision which takes away some existing right of position, as where a member of an organization is expelled or a license is revoked. Second, at the other extreme, there are what may be called the application cases. There are cases where the doctrine merely refuses to grant the applicant the right or position which he seeks, such as membership of the organization or a license to do certain acts. Third, there is an

intermediate category which may be called the expectation cases, which differs from the application cases only in that the applicant has some legitimate expectation from what has already happened that his application will be granted. This head includes cases where an existing license holder apply for a renewal of his license or a person already elected or appointed to some position seeks confirmation from some conforming authority....”

“The intermediate category, that of the expectation cases, may at least in some respects we regarded, is being akin to the forfeiture cases than the application cases; for although in form there is no forfeiture but merely an attempt at acquisition that fails, the legitimate expectation of a renewal of the license or confirmation of the membership is one which raises the question of what it is that has happened to make the applicant unsuitable for membership or license for which he was previously thought suitable”.

At page 507, Dr. Cooray further states,

“A Petitioner for mandamus who had earlier been issued a liquor license for 1985, and thereafter a liquor license for 1986 was refused a liquor license for 1987 without being afford an opportunity of being heard. Rejecting the contention that he had no right to be heard before such refusal, the Supreme Court said:

“It has been repeatedly recognized that no man is to be deprived of his property without having an opportunity of being heard. Even if what he had was mere permission to which (he) had no legal entitlement of claim of right, the refusal of the permission which had previously been granted I think maybe at least sufficiently comparable to the act of taking away property so that the audi alteram partem rule will apply. I am unable to agree with learned Counsel for the Respondents that (he) was simply ‘hoping’ against ‘hope’ of being granted a renewal of a license. He had in my view, a legitimate expectation of success and therefore a right to a full and fair opportunity of being heard”. (Amarasinghe J., Sundarakaran vs. Bharathi, 1989 1 SLR 46,60)

In the instant case, regarding legitimate expectation, the following questions flow from the decided authorities:

- (a) Was an expectation created in the minds of the Petitioner that so long as she was legally married to the 2nd Respondent her visa would be extended?
- (b) Should she cease to have this expectation because she was forced to leave her matrimonial home and seek protection from the violence imposed on her by the 2nd respondent?
- (c) Did the Petitioner have a legitimate expectation from the State authorities including the 1st respondent that the Authorities will protect her as a victim of violence?
- (d) By rejecting the Petitioner's claim to a spousal visa, isn't the 1st respondent indirectly supporting the objective of the 2nd Respondent who does not want his wife to remain in this country due to his second marriage?

It is seen that the petitioner's case falls under what Megarry V.C. in McInnes vs. Onslow Fane described as the 'expectation cases'. She has been issued a spousal visa eight times and had lived in the country legally on these spousal visas. Therefore, if her expectation that her spousal visa will be renewed is to be denied, then the 1st Respondent must give a reason as to "what it is that has happened to make the applicant unsuitable for membership or license for which he was previously thought suitable." (Vide Dr. Cooray, page 505).

Thus, the above four questions are answered affirmatively. Due to the foregoing reasons, I hold that the expectation entertained by the Petitioner that she will be issued with spousal visa by the 1st Respondent is an expectation the Petitioner was entitled in law through the conduct of the 1st Respondent to entertain.

Furthermore, it was drawn to the attention of the Court, several legislations which Sri Lanka has passed to protect victims of violence and particularly women from violence.

1. Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015 in its preamble states:

"AN ACT to provide for the setting out of rights and entitlements of victims of crime and witnesses and the protection and promotion of such rights and entitlements; to

give effect to appropriate international norms, standards and best practices relating to the assistance to and promotion of victims of crime and witnesses”.

2. The Prevention of Domestic Violence Act No. 34 of 2005 in its preamble states:

“AN ACT TO PROVIDE FOR THE PREVENTION OF ANY ACT OF DOMESTIC VIOLENCE AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO”.

3. The Women Empowerment Act No. 37 of 2024 in Section 2(e) states as follows:

“2. The object of this Act shall be: (e) to take steps to prevent discrimination, marginalization, sexual harassment and violence against women and to strengthen the measures for the prosecution and punishment of acts or omissions relating thereto;”

Thus, the State has woven a tapestry of legislation to protect women from violence.

When applying the principle of legitimate expectation together with the principle of *lex non cogit ad impossibilia* and the obligation of State Authorities to protect victims of violence, the following facts become apparent:

The Petitioner has been granted spousal visas at least eight times; legally, the Petitioner is still married to the 2nd Respondent which is the only requirement for a spousal visa under the Sri Lanka Migration Control Manual; the requirement for a letter from the husband consenting to maintain the wife is only a documentation requirement; the only change of circumstances is that the Petitioner has been forced to leave her house because her life was under threat by her husband; Sri Lanka has laws to protect victims of violence and thereby obligates Authorities to act in the best interest and the protection of victims of violence and particularly victims of gender based violence; the Petitioner to date remains under a protection order issued by the Magistrate Court of Hulftsdorp which the said Court had found the 2nd Respondent guilty of bigamy; in this context to expect the Petitioner to bring a letter from the 2nd Respondent is an impossibility.

Under these circumstances, it is established that the 1st Respondent has acted arbitrarily and unjustly in denying the spousal visa for the Petitioner.

FINE IMPOSED ON THE PETITIONER:

While this application was pending before this Court, the Petitioner's mother who resided in India fell severely ill in July 2024. The Petitioner had to urgently leave the country but the 1st Respondent's Office has informed the Petitioner that she had to pay a fine of Rs. 155,000/- and otherwise she will not be allowed to return to the country once she exists. The Petitioner has pleaded with the 1st Respondent that she had not committed any illegal act to be fined and that she was residing on a Court order issued on 20th November 2023. However, the 1st Respondent refused to withdraw the fine. When this matter was appraised of this Court, on 9th August 2024, the Court has directed the 1st Respondent to suspend the payment and decided on this payment at the argument. (vide journal entry of 9th August 2024).

It was contended for the Petitioner that a fine is a penalty; a person cannot be penalized for following a Court order enabling her to remain in the country legally. The penalty of Rs. 155,000/- was for the fact that she had 'overstayed' her visa. It was contended that when a Court order exists to enable the Petitioner to legally remain in the country, she cannot be imposed a fine as that would amount to a violation of Article 12(1) of the Constitution.

It is pertinent to note that interim order preventing the 1st Respondent from taking legal steps to remove or deport the Petitioner until the hearing and final disposal of this Application has been granted by this Court on 20th November 2023. Therefore, it is my considered view that the Petitioner should not be penalized for remaining in the country on a valid court order issued and the alleged fine for 'over stay' cannot be legally imposed on the Petitioner. Thus, the Petitioner is entitled to get waived off the alleged fine.

CONCLUSION:

It was submitted that the Petitioner is entitled to reliefs ‘c’ or ‘d’ in her Petition. Relief (c) should not be granted as there is no condition as to the validity of her marriage which is an essential requirement for spousal visa. Relief (d) too would be granted subject to variation as follows:

“An order in the nature of Writ of Mandamus directing the 1st Respondent to issue spousal visas for the Petitioner so long as she remains as the spouse of the 2nd Respondent.”

For all the above circumstances, the Petitioner is entitled to the relief (d) as ordered above.

Judge of the Court of Appeal

Hon. Rohantha Abeyesuriya PC, J.(P/CA)

I agree.

President of the Court of Appeal