



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

Appeal Number: IA/25658/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 22 May 2014**

**Determination**

**Promulgated**

**On 4 June 2014**

**Before**

**UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**MRS SAGUNTHALADEVI KANDASAMY**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr J Martin, Counsel

For the Respondent: Mr P Nath, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Secretary of State appeals with leave against the decision of First-tier Tribunal Judge Beach allowing the appellant's appeal under Article 8 of the ECHR.

2. The appellant is a citizen of Sri Lanka born on 3 December 1948. She first entered the UK on 2 November 2010 with leave to enter as a visitor valid until 12 May 2011. The appellant returned to Sri Lanka in March 2011 and re-entered the UK on 3 September 2012 with leave to enter as a visitor valid until 9 February 2013. On 31 January 2013, she made an application for further leave to remain as the dependent relative of a person present and settled in the UK. On 11 June 2013 the respondent refused her application and made a decision to remove her by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.
3. At the hearing before the judge on 13 December 2013, the parties decided that the matter could be dealt with by way of submissions only, after discussions between them. The appellant was accompanied to the hearing by her daughter and son-in-law all of whom did not give evidence because of the agreement between the parties.
4. The judge found that the appellant accepts that she cannot fulfil the requirements of paragraph E-ECDR of Appendix FM because she only had leave to remain as a visitor. It was submitted that she fulfils the other requirements of paragraph E-ECDR and that it would be disproportionate to expect her to return to Sri Lanka to obtain entry clearance.
5. The judge considered an undated letter from Dr Whyte which stated:

*"[The Appellant] was seen previously by my colleague suffering from low mood; being tearful all the time, angry, and not wanting to do much. Her son in law who was with her reported that this has been ongoing since her husband died. Based on the symptoms she was diagnosed as suffering from depression for which treatment was started. She has continued on her treatment but her mood still remains a bit low. She is being reviewed on a regular basis ..."*

6. The judge also considered a psychiatric report from Dr Lawrence MRCP MRC Psych dated 13 January 2013 which stated:

*"[The Appellant] was clearly subjectively and objectively depressed during the interview and at times she was quietly crying throughout the interview ... She had a downcast gaze and only made poor eye contact when talking or sitting quietly. There was evidence of self-neglect - a slight lack of cleanliness. She had a very marked 'T sign of depression ...'.*

*It was clear that [the Appellant] was suffering at a very low level ... Mood was very, very low both objectively and subjectively ... She was described as feeling helpless, hopeless and pointless. She does not feel like doing anything. She has been treated for clinical depression in the past in Sri Lanka ...*

*I was told that [the Appellant] neglects herself and is withdrawn ... She is a serious suicide risk which would increase during the first two weeks of treatment ... This woman is suffering from a Major Depressive Episode, with marked apathy and sleeplessness ... She currently has Psychotic symptoms and she is not currently on any kind of treatment but needs Anti-Depressants, which would help her sleep ..."*

7. The judge said that the credentials of Dr Lawrence were not challenged by the respondent. There was no reference to the medical report in the Reasons for Refusal Letter despite it appearing in the respondent's bundle and despite it being sent with the representations submitted with the application form. The judge found that Dr Lawrence is qualified to provide a report for the appellant.
8. The judge found that Dr Lawrence's report is consistent with the symptoms described by the appellant's family in the UK, including her grandson. The family are all very concerned for the appellant's mental health. It appears that she requires encouragement to perform everyday tasks and that if she were left alone in Sri Lanka she would not undertake these everyday tasks. Even whilst living with her family in the UK the psychiatrist commented on a lack of cleanliness which suggests a person who struggles to complete everyday tasks without significant input from others. A letter from the family friend in Sri Lanka confirms that the appellant would not accept his assistance and that he did not feel able to continue to provide his assistance. There are no family members in Sri Lanka to provide this assistance.
9. The judge took account of the COIR which states that antidepressants are available in Sri Lanka. There was no suggestion by the family in the UK that they would not provide financial support to the appellant in Sri Lanka if she had to pay for this medication. The issue there was whether the appellant would independently access the support available and whether she would be able to undertake everyday tasks alone.
10. The judge then relied on **MF (Article 8 - new rules) Nigeria UKUT 393 (IAC)** which was referred to by the appellant's Counsel. The judge found that whilst **MF** and subsequent case law refer to Immigration Rules regarding deportation, the same principles must also apply to the Immigration Rules regarding private life.
11. The judge then made the following findings:

*"30. The Appellant has lived with her daughter and grandson in Sri Lanka until the Appellant's daughter and grandson moved to the UK in 2010. The Appellant tried to live with her son in Germany but this did not work out. She visited her family in the UK in 2010/2011 and again in 2012 (on this occasion she remained in the UK having made her application). There is a letter from the*

*Appellant's grandson in the bundle of documents before me in which he speaks of a very close and loving relationship with the Appellant and of his concern for her and for him if she has to return to Sri Lanka. There is clearly a close family relationship in this particular case partly as a result of the Appellant's daughter and grandson living with the Appellant in Sri Lanka whilst separated from the Appellant's son in law and as a result of the Appellant's mental health problems which have led to a particular reliance by the Appellant on her family in the UK. In those circumstances, I find that the Appellant has established a private and family life in the UK.*

- 31. If the Appellant were removed from the UK then this would lead to an interference with the Appellant's family and private life and I find that the interference would be of sufficient gravity as to engage Article 8.*
- 32. The Appellant accepts that she cannot fulfil the requirements of the Immigration Rules relating to adult dependent relatives. I find therefore that the interference with the Appellant's family and private life is in accordance with the law and is necessary for the purposes of democratic society.*
- 33. I therefore consider the proportionality of the decision. The Appellant has a very close family relationship with her family in the UK. This relationship was formed in Sri Lanka but has continued in the UK as a result of visits by the Appellant to the UK. The Appellant is suffering a major depressive illness and has been suffering from depression for some time. She is extremely reliant on her family in the UK. The removal of the Appellant from the UK would also have an adverse effect on the Appellant's daughter and on the Appellant's grandson who has a particularly close relationship with her. The opinion of Dr Lawrence is that the Appellant is at a high risk of suicide. This is extremely likely to increase if she is returned to Sri Lanka where she has no family members to support her. The likelihood of the Appellant seeking help in Sri Lanka is low because she has rejected help already from a family friend and had to be taken to the GP by her family in the UK rarer than seeking assistance herself. This would have an immediate adverse impact on her mental health because she would not then be receiving relevant treatment. In light of the medical evidence before me and the unchallenged evidence of the Appellant's son in law, daughter and grandson in the UK, I find that the Appellant is suffering from a major depressive illness, that she requires help and encouragement in everyday tasks including her medication and that she is at real risk of suicide if she is returned to Sri Lanka without family support. Even a short return in order to make an application for entry clearance as an adult dependent relative would be*

*extremely likely to have an immediate and adverse effect on the Appellant.*

34. *In those circumstances and taking account of all the evidence as well as relevant case law including the judgments in **Huang [2007] UKHL 11**, **Chikwamba [2008] UKHL 40** and **Beoku-Betts [2008] UKHL 39**, I find that the Respondent's decision is not a proportionate decision."*

12. The grounds of appeal submitted by the respondent complained about the judge's approach to Article 8. The grounds stated that **MF (Nigeria)** confirms that the Immigration Rules are a complete code. That formed the starting point for the decision maker. Furthermore it was made clear in **Gulshan [2013] UKUT 00640 (IAC)** that the Article 8 assessments shall only be carried out where there are compelling circumstances not recognised by the Immigration Rules. It was argued that the Tribunal did not identify such compelling circumstances and its findings are therefore unsustainable. It was also submitted that the Tribunal failed to provide adequate reasons for their findings that it would be disproportionate to remove the appellant. It was submitted that the appellant has suffered from mental health problems since 2002 and her family chose to return to the UK leaving her without any support in Sri Lanka. The Tribunal failed to provide adequate reasons why it would be unreasonable for her family here or in Germany to return to Sri Lanka to help care for her. Even if they could not, it was open to her family to seek additional support from the state, family or friends to help her and they can maintain contact with each other via visits and via modern means of communication as they have been able to do to date.
13. Permission was granted because it was not apparent that the guidance in **Gulshan (Article 8 - new Rules - correct approach [2013] UKUT 640 (IAC))** had been followed by the judge.
14. Mr Nath relied on the grounds. He submitted that **MF** endorses a two stage approach to the consideration of Article 8. The first stage is a consideration of Article 8 within the Immigration Rules and the judge failed to set out the requirements of the Immigration Rules in her determination. Mr Nath accepted that the second stage is a freestanding consideration of Article 8 ECHR. However, he argued that in her consideration of this second stage the judge's findings on proportionality were inadequate. There was no consideration of what other support the appellant could receive in Sri Lanka. There was no evidence of the medication the appellant was taking and whether the medication would be available in Sri Lanka. She was not taking any medication when the psychiatrist saw her. More evidence needed to be obtained with regard to the appellant's medical problems.
15. Counsel relied on his skeleton argument.

16. I accept Counsel's submission in his skeleton argument that this appeal was heard on 13 December 2013 whereas **Gulshan** was not promulgated until 17 December 2013. The judge could therefore not be faulted for failing to mention it.
17. The judge remarked that Dr Lawrence's report was before the Secretary of State at the date of the application but the respondent made no reference to the report in the Reasons for Refusal Letter. I note that the judge's reliance on the medical reports by Dr. Lawrence and Dr. Whyte was not challenged by the respondent.
18. As regards the two stage approach to Article 8, the judge accepted that the appellant's application could not succeed under paragraph E-ECDR of Appendix FM because she only had leave to remain as a visitor and could not fulfil the requirements of the Immigration Rules relating to adult dependent relatives. Consequently, the judge properly followed the approach in **MF (Article 8 - new rules) Nigeria UKUT 393 (IAC)** (although **MF** is a deportation case) by considering whether there are circumstances which are sufficiently compelling to outweigh the public interest in requiring the appellant to return to Sri Lanka. Mr. Nath accepted that **MF** endorses a two-stage approach to the consideration of Article 8. I find that the judge did precisely that.
19. I accept Counsel's argument that the respondent's Reasons for Refusal Letter, which the HOPO below relied on, failed to grapple with the issues advanced on the appellant's behalf and which were set out in Dr Lawrence's report. The appellant's husband had died in 2002. She was living in Sri Lanka with her daughter and grandson until 2010. The grandson is very close to his grandmother. The appellant has been living in the UK since 2012 and there is a clear dependency on the family members here. The judge's findings at paragraph 33 as to why the appellant's circumstances were compelling were properly reasoned and on the evidence, she was entitled to reach those findings.
20. Mr. Nath submitted that more information was needed about the appellant's medical condition and medication. That evidence should have been sought at the First-tier level but it was not because the Home Office Presenting Officer below agreed that the appeal could be disposed of by way of submissions only. Consequently, there was no challenge by the respondent to the evidence put forward by the appellant about her circumstances in Sri Lanka and the evidence contained in Dr Lawrence's report about the nature of her illness, all of which evidence the judge was entitled to rely on. The respondent's grounds amount to no more than a disagreement with the judge's well reasoned findings.
21. The judge's decision does not disclose an error of law. The judge's decision allowing the appellant's appeal shall stand.

Signed

Date

Upper Tribunal Judge Eshun