



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/28095/2014

THE IMMIGRATION ACTS

Heard at Field House
On 6th November 2015

Determination & Reasons Promulgated
On 8th December 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR RAJESWARY THIAGARAJAH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr David Shaw (Solicitor)
For the Respondent: Mr C Kandola (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Boylan Kemp, promulgated on 3rd June 2015, following a hearing at Birmingham Sheldon Court on 5th May 2015. In the determination, the judge allowed the appeal of Mrs Rajeswary Thiagarajah. The Respondent subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a citizen of Sri Lanka, who was born on 27th February 1939. She is 76 years of age. She appealed against the decision of the Respondent Secretary of State dated 3rd July 2014, refusing her application for leave to remain in the UK on human rights grounds.

The Appellant's Claim

3. The Appellant's claim is that she has lived in Sri Lanka for her entire life. She had three sons born between 1962 and 1969. Her husband died in 1982. She has no other family members left in Sri Lanka. The Appellant was visiting her UK based son, who is her Sponsor, when her eldest son moved to Australia, and with whom the Appellant had lived in Sri Lanka prior to his emigrating to Australia. She left in May 2013 to visit her son in Canada before travelling to the UK on 11th November 2013. Her health has significantly deteriorated since she has been in the UK. She is unable to care for herself if returned to Sri Lanka. There is insufficient care available for her in Sri Lanka. Moreover, she is not able to financially, physically, and emotionally have anybody else support her. She cannot be cared for by her two other sons, one of whom is in Australia and the other is in North America.

The Judge's Findings

4. The judge held that the Appellant could not succeed under paragraph 276ADE(1) and could not satisfy the dependent adult relative Rule under EC-DR.1.1(a) which requires the applicant to be outside the UK at the time of the application, which she plainly was not in this case. The Appellant's appeal would fail under the Immigration Rules (see paragraph 27).
5. The judge went on to consider the submission made on the Appellant's behalf that she was an elderly woman now who would find having to go to a foreign country frightening, and that she is dependent on her family due to her age and health (see paragraph 31).
6. The judge concluded that the Appellant had a family and private life in the UK. In the circumstances, requiring her to return permanently to Sri Lanka would be an interference of such gravity as to engage Article 8 (see paragraph 34). The judge went on to find that the Appellant "has developed a strong bond with her grandchildren and that she would be greatly upset if she had to leave them, and that she would be unable to cope on her own if she were to go back to Sri Lanka and she is dependent on her family in the UK" (paragraph 35).
7. Furthermore, the judge observed how the Appellant had given evidence that, "she would not be able to obtain a carer to help her in Sri Lanka as there are none available and that there is no professional body providing carers" (paragraph 36). Furthermore, the Sponsor's statement also echoed this concern, "as to the Appellant's

ability to care for herself on a daily basis due to age and health” (paragraph 37). There were also medical letters from practitioners (paragraph 38).

8. Taking the medical evidence into account and noting that “the Appellant has age and health related conditions that means she is reliant upon her family to perform everyday tasks such as cooking and shopping”, the judge concluded that, “there is a level of dependency that goes beyond the normal family ties and so the principles set out in **Kugathas [2003] INLR 170** apply” (paragraph 43).
9. On this basis, the judge allowed the appeal on human rights grounds.

Grounds of Application

10. The grounds of application state that the judge was wrong to allow the appeal on Article 8 grounds because the judge had observed already that the Appellant had lived “the vast majority” of her life in Sri Lanka (see paragraph 44), and the Sponsor could arrange for a carer for her in Sri Lanka (see paragraph 42), and her presence in this country had been wholly precarious such that there was a public interest in maintaining effective immigration controls.
11. On 11th August 2015, permission to appeal was granted on the basis that the judge had made only a superficial reference to public interest in paragraph 33 of the decision and allowing the appeal on human rights grounds had not been properly justified.

Submissions

12. At the hearing before me on 6th November 2015, Mr Kandola, appearing on behalf of the Respondent Secretary of State, submitted that at paragraph 24 the judge had noted that this was an application that could not succeed under the Rules because the Appellant was required to be outside the UK in order to make a dependent adult relative application. At paragraph 27 the judge had observed that, “it would be proportionate to require the Appellant to return to Sri Lanka so as to make her application to return as an adult dependent relative” under the Immigration Rules (see paragraph 27). That, submitted Mr Kandola, was nub of the appeal. The judge had considered both the Immigration Rule requirement as well as the proportionality of requiring the Appellant to return and to make a fresh application from overseas. There is nothing further to be said. Consideration of the doctor’s letters (see page 131) suggesting that the Appellant suffered from type 2 diabetes, and had the early onset of dementia and high cholesterol, were not the kind of medical problems that could not be catered for in Sri Lanka, and an appeal could not have been allowed on exceptional grounds on this basis.
13. For his part, Mr Shaw submitted that he would rely upon the “Appellant’s response to the Respondent’s Notice of Appeal”. He submitted that the judge had considered every one of the elements applicable in this appeal. Having done so, the judge said (at paragraph 33) that the **Razgar** Rules had to be applied before the appeal could be allowed under Article 8. He gave proper consideration then to the “public interest” requirement. He then went on to say (at paragraph 34) that the main issue was

whether it would be proportionate, as a matter of human rights law, to allow the appeal. He then considered (at paragraph 35) the fact that there was a “strong bond with her grandchildren and that she would be greatly upset if she had to leave them”. At paragraph 42, the judge recognised that the Sponsor had said in cross-examination that he could arrange for a carer for the Appellant in Sri Lanka, “but he did not know if they would look after her in the same way as her children would, and that he is concerned they would simply do the day-to-day chores and not deal with the fact that she was emotionally down” (paragraph 42). It was not enough to say that carers were available in Sri Lanka.

14. The main question was how this would affect the Appellant in her present circumstances when she already knew that she could be well-cared for by her own relatives and children in the UK. This was the aspect that the judge had specifically considered himself. Mr Shaw submitted that the Sponsor and his wife were high earners, earning £50,000 and £30,000 respectively. They could afford to look after their mother without recourse to public funds, and thereby minimising the public interest in the enforcement of immigration control against her. They had a five bedroom house.
15. The Sponsor was vulnerable and showed clinical signs of early dementia that were of concern to the entire family. As far as the judge’s reference to it being “proportionate to require the Appellant to return to Sri Lanka so as to make her application to return as an adult dependent relative” (see paragraph 27) is concerned, what this refers to plainly is that this was not a “Chikamba-style” type case, so that the Immigration Rules plainly had to be adhered to. This is made quite clear in the paragraph where the judge refers to it being “proportionate”. Thereafter, however, the judge goes on to consider the human rights aspect of the case quite independently of the Immigration Rules, and it is at this stage that he states that the remaining question is “whether or not such interference would be proportionate” (see paragraph 34).
16. At this stage the judge then begins to look at the human rights aspects of the case, drawing attention to the “strong bond with her grandchildren” and how the Appellant states in her witness statement, that, “as a lone elderly woman I would be vulnerable. Age is catching up with me and I am hard of hearing. I find it difficult to move and would have trouble shopping and cooking”.
17. These matters the judge was entitled to look at as a question of “proportionality” in the context of human rights law. Having done so, the judge was of the view that the appeal should be allowed on human rights grounds. To say so was not to fall into error.
18. In reply, Mr Kandola submitted that the Appellant did not meet the Immigration Rules and the proper course of action was for her to return and to make a fresh application under the Immigration Rules.

No Error of Law

19. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I

should set aside the decision. My reasons are as follows. The judge here found that the Appellant had a private and family life (see paragraph 34) which went beyond normal family ties. He took into account the Appellant's age, her health, and related conditions and that she is reliant upon her family to perform such everyday tasks as cooking and shopping (paragraph 43). He observed that the Sponsor was financially independent and had undertaken to provide for the Appellant (paragraph 44). There was also sufficient accommodation. The judge had particular regard to the medical evidence (at paragraph 43).

20. He took into account the public interest. He was quite specific in stating that, "... I must take into account the public interest in the maintenance of effective immigration control, as set out in Section 117B ..." (paragraph 33). It is not as if this was overlooked. The matter was considered comprehensively and the balance of considerations plainly fell in favour of the Appellant, and the judge expounded upon, as he was entitled to do.
21. In **Budhathoki (reasons for decisions) [2014] UKUT 341**, Haddon-Cave J confirmed that, "it is generally unnecessary and unhelpful for First-tier Tribunal judgements to rehearse every detail raised in a case, provided that judges ... identify and resolve key conflicts in the evidence and explain in clear and brief terms that their reasons, so that the parties can understand why they have won or lost". This is plainly the case here.
22. It confirms the earlier position set out in **Shizad [2013] UKUT 85**, where the Tribunal stated that the "reasons it did not make sense is if the decision as a whole makes sense". This is manifestly the case here. The challenge in this case amounts to a disagreement with the judge's findings. There is no error of law. The judge is entitled, on the evidence, to come to the conclusions that he did.

Decision

The decision of the original judge did not amount to an error of law. The decision stands. The appeal of the Secretary of State is dismissed.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

3rd December 2015