Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/30506/2014
& IA/30503/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 6th March 2015	**On 10th March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE LINDSLEY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS SHANTHI SUNETHRA WICKRAMAGE (1)
MASTER TANYA DASINTHA WICKRAMAGE (2)
(NO ANONYMITY DIRECTION MADE)

Respondents

Representation:
For the Appellant: Mr S Kandola, Home Office Presenting Officer
For the Respondents: Ms A Seghra, Counsel, instructed by Nag Law Solicitors

DETERMINATION AND REASONS

Introduction

1. This is an appeal by the Secretary of State but I will refer to the parties as they were before the First-tier Tribunal.

2. The first appellant is a citizen of Sri Lanka born on 8th January 1952. The second appellant is her son, and a citizen of Sri Lanka born on 7th

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February 1996. They arrived in the UK on 9th December 2005: the first appellant had a work permit and permission to enter in this capacity and the second appellant was her dependent. The appellants' permission to remain expired on 18th November 2010. They then overstayed and applied on 5th March 2013 for leave to remain in accordance with Article 8 ECHR. They were refused without a right of appeal on 13th May 2013. Their solicitors then conducted judicial review proceedings to challenge the lack of a refusal with a right of appeal. As a result the Secretary of State made an appealable decision refusing the appellants applications on 15th July 2014. On 29th July 2014 the appellants appealed. Their appeals against the decision were allowed by First-tier Tribunal Judge Phull in a determination promulgated on the 3rd December 2014.

3. Permission to appeal was granted by Judge of the First-tier Tribunal Frances on 21st January 2015 on the basis that it was arguable that the First-tier judge Phull had erred in law in determining the appeal on the basis that the second appellant was a child when in fact he had been over the age of 18 years at the time of decision.

4. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions

5. Mr Kandola relied upon the grounds of appeal in relation to the determination of the appeal made by the second appellant. He argued that the second appellant had been 18 years old at the date of hearing. Judge Phull had not specified the sub-section of paragraph 276ADE of the Immigration Rules he relied upon however it was clear that he had wrongly relied upon paragraph 276ADE (iv) in allowing the second appellant's appeal on the mistaken basis that he was a child. He had seemingly thought the appellant could succeed under paragraph 276ADE (iv) of the Immigration Rules when he could not due to his age and had therefore looked at issues of the reasonableness of expecting the second appellant to leave the UK. The only paragraph under which the second appellant could potentially succeed in his appeal was in fact paragraph 276ADE (vi) of the Immigration Rules which meant he had to show that he had not ties to Sri Lanka. Although there was reference to ties at paragraph 25 of the determination this term had not been given its correct legal meaning in accordance with Ogundimu (Article 8 – new Rules) Nigeria [2013] UKUT 60.

6. Mr Kandola argued that the determination of the first appellant's appeal erred in law because it relied upon the second appellant succeeding under the Immigration Rules when he could not, as outlined above. He did not seek to rely upon the further original grounds of appeal in this respect.

7. Ms Seghra relied upon her skeleton argument. She argued that Judge Phull had determined the appeal correctly under paragraph 276ADE (iv)

of the Immigration Rules. Paragraph 276ADE states that: "The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application the applicant:" and then at subsection (iv) "is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK;"

8. The second appellant had applied on 5th March 2013 when he was 17 years old, and had been in the UK for over seven years at that time. Paragraph 276ADE (iv) was therefore the correct paragraph of the Immigration Rules, and indeed this was the approach taken by the Secretary of State in her refusal letter, see page 4 of 7 at the third paragraph where the refusal accepts the appellant was under the age of 18 at the time of application and had been in the UK for seven years. What the Secretary of State had contended in her refusal was that the second appellant could reasonably be expected to leave the UK and thus fell to be refused.

9. The determination of Judge Phull therefore deals correctly with the issue as to whether the second appellant could reasonably be expected to leave the UK as this was the aspect of the paragraph 276ADE (iv) of the Immigration Rules in dispute. No errors of law in relation to the determination of this issue are alleged in the Secretary of State's grounds.

10. Mr Kandola had conceded that there were only errors in the determination of the first appellant's appeal if there were errors in the determination of the second appellant's appeal. As there were no errors in the determination of the second appellant's appeal the determination of Judge Phull should stand.

11. At the end of the hearing Mr Kandola said that he accepted that the Secretary of State could not succeed in the appeal. I informed the parties that I found that there was no error of law in the determination of Judge Phull but that I would put my reasons in writing.

Conclusions

12. Judge Phull determined this appeal correctly in accordance with the version of the Immigration Rules at paragraph 276ADE extant at the time of decision. These Rules stated that the requirements had to be fulfilled at the time of application. The second appellant applied on 5th March 2013 when he was 17 years old. Judge Phull therefore determined the appeal by assessing whether the appellant could fulfil paragraph 276ADE (iv) of the Immigration Rules which dealt with those under the age of 18 years. It was conceded by the respondent in the reasons for refusal letter dated 15th July 2014 that the appellant was under 18 years of age at the date of application and had been in the UK for seven years at that time. Judge Phull addressed the issue disputed by the Secretary

of State, whether it would be reasonable to expect the second appellant to leave the UK, in his determination at paragraphs 22 – 26. I find that he has determined the appeal of the second appellant without any legal error. Following submissions this was also the view of the representative for the Secretary of State.

Decision

13. The decision of the First-tier Tribunal did not involve the making of an error on a point of law.

14. The decision of the First-tier Tribunal allowing the appeals is upheld.

Deputy Upper Tribunal Judge Lindsley

6th March 2015