



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

Appeal Number: IA/41620/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 27 July 2015**

**Decision & Reasons Promulgated  
On 7 October 2015**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS  
DEPUTY UPPER TRIBUNAL JUDGE A M BLACK**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**CHANDRAKEERTHI AMARASINGHE  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr C Avery, Home Office Presenting Officer

For the Respondent: Mr D Kumudusena, Lyon Legal Ltd

**DECISION AND REASONS**

1. We see no need for, and do not make, an order restraining publication about this case.
2. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal, First-tier Tribunal Judge Majid, who, in a Decision promulgated on 23 December 2014, allowed the appeal of the respondent, hereinafter “the claimant”, against the decision of the Secretary of State refusing him leave to remain on the basis of long lawful residence.

3. The claimant is a citizen of Sri Lanka. He has lived substantially in the United Kingdom for a period of about thirteen years although the phrases “substantially” and “about” are crucial because there is a dispute over his ability to satisfy the requirements of the Rules that would enable him to remain on the basis of ten years’ lawful residence. The Secretary of State is clearly of the view that he is not so entitled.
4. The grounds of appeal before the First-tier Tribunal did include a ground using the phrase “in accordance with the law” and can be construed, we find, as the claimant relying on the ground that the decision was not in accordance with the law.
5. It was certainly the claimant’s case that the decision of the Secretary of State was wrong and that he was entitled to remain but the First-tier Tribunal’s Decision is a remarkable but unsatisfactory document. It contains a lengthy tribute to the undoubted abilities of a former President of this Tribunal and comments on the attitudes of some politicians towards human rights legislation but it does not contain very much about the actual issues of contention in the case.
6. We understand the Secretary of State’s reasons for pursuing this appeal and we are very grateful to Mr Kumudusena, for the claimant, recognising that the Decision is unsustainable. It was straightforward and helpful on his part, but thoroughly professional and in accordance with the facts, for him to concede that the decision could not be justified. We therefore set aside the decision of the First-tier Tribunal.
7. We then have to decide what to do next. We were encouraged by Mr Kumudusena to allow the appeal to the extent that it was not in accordance with the law. His argument in support of this was that the Secretary of State had not considered whether the appeal should be allowed under Article 8 grounds outside the Rules. There are two problems with that argument. Firstly, it is directly contrary to what she claimed to have done in the refusal letter and, secondly, Mr Kumudusena was not able to point out to us succinctly what the strong points were that could properly have led to the appeal being allowed for that reason. Presently we see no merit in that point. This ruling does not prevent the point being argued in the next hearing when there might be findings of fact that assist it.
8. There is something else going here that needs to be recorded. Further matters have come to light on which the claimant wishes to rely in pursuance of his claim for permission to remain in the United Kingdom. He has been quite open about these in discussions with the Presenting Officer and has indicated that whatever we do today the claimant, through his solicitors, will make further representations to the Secretary of State. Mr Avery was helpful enough to say that there is no reason whatsoever to delay considering those representations because of the continuance of this appeal and we hope that will be noted by the Secretary of State, who may be able to give quick attention to points when they are raised. We put it

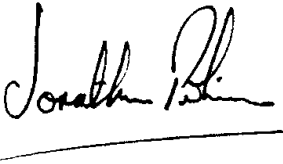
no higher than that. No doubt there are many other things that will be competing for her attention but we have said what we have said.

9. The consideration by the First-tier Tribunal was so poor it is only fair to the claimant that he has a full rehearing in a Tribunal well-suited to making findings of fact and we are allowing the Secretary of State's appeal to the extent that we set aside the decision of the First-tier Tribunal and rule that the case be decided again in the First-tier Tribunal for the reasons given.
10. This is not a case where the interests of justice would be served by a particularly quick listing. The case will take its course but it must not be heard by First-tier Tribunal Judge Majid.

**Notice of Decision**

The Secretary of State's appeal is allowed to the extent indicated above.

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', is written over a horizontal line.

Dated 5 October 2015