**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: VA/02980/2015 &

VA/02981/2015

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 4 July 2017** | **On 11 July 2017** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD**

**Between**

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

Appellant

**And**

**MR ALAWDEEN ADAMKANIGE MOHAMED – FIRST RESPONDENT**
**MRS FATHIMA SADHAANA SEINUL ABDEEN – SECOND RESPONDENT**
**(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr S Whitwell, Home Office Presenting Officer.
For the Respondent: Mr P Lewis, Counsel.

**DECISION AND REASONS**

1. The Appellant in this case is the Secretary of State for the Home Department. However, for the sake of clarity, I shall use the titles by which the parties were known before the First-tier Tribunal with the Secretary of

State referred to as "the Respondent" and Mr Alawdeen Adamkanige Mohamed and Mrs Fathima Sadhaana Seinul Abdeen as "the first and second Appellants" respectively.

2. Both Appellants are citizens of Sri Lanka. They sought entry to the United Kingdom as visitors. The Entry Clearance Officer refused their applications in a decision dated 17 December 2014. They duly appealed and following a hearing at Taylor House Judge of the First-tier Tribunal L Rahman allowed the appeals on human rights grounds.

3. The Respondent sought permission to appeal which was granted by First-tier Tribunal Judge Saffer on 9 June 2017. His reasons for the grant were:-

> "1. The Respondent seeks permission to appeal against a decision of First-tier Tribunal Judge Rahman promulgated on 6 December 2016 whereby the appeal against the decision to refuse to grant leave to enter as family visitors was allowed.
>
> 2. I am satisfied that the application is in time as it was received on 14 December 2016.
>
> 3. Having found that family life was not engaged between the Appellants and Sponsors, it is arguable that the Judge materially erred in then findings that there would be a disproportionate interference in their family lives and consequently allowing the appeal. All grounds may be argued".

4. Thus the appeals came before me today.

5. In his submissions Mr Whitwell expanded the grounds seeking permission to appeal. Firstly, that the Entry Clearance Officer's principle ground of appeal is that the Judge misdirected himself in finding the refusal of the Entry Clearance Officer to refuse the Appellants an entry clearance constituted an interference of a gravity crossing the minimum threshold for engagement of Article 8 of the ECHR. He further submitted that the Judge had erred in his proposition that a refusal of a visitor's entry clearance to enter the United Kingdom for a short period of time was an interference with Article 8 in a case where there is no family life. Further that having found at paragraphs 55 to 57 of his decision that he was not satisfied that there was family life between the Appellants and the UK Sponsors the Judge had made a flawed finding by concluding that he was satisfied that the decision of the Entry Clearance Officer interfered with family and private life rights. Secondly the Judge erred in any event in relation to his analysis of private life. It is the Entry Clearance Officer's contention that the refusal of entry clearance in a visit case does not constitute an interference with the private life of Appellants. Mr Whitwell referred me to the authorities of **Abbasi and another (visits – bereavement – Article 8) [2015] UKUT 00463 (IAC)** and **SS (ECO-Article 8) Malaysia [2004] UKIAT 00091.**

6. Mr Lewis argued that at paragraph 46 and 47 of the decision the Judge had effectively recorded the concession by the Home Office Presenting Officer in relation to Article 8. For completeness I set out those paragraphs here. They states:-

> "46. Mr Graham stated that he relied upon the entry clearance officers (sic) decisions dated 3rd December 2014 and the entry clearance managers (sic) review dated 4th September 2015. The appellants had a limited right of appeal. The immigration rules were not satisfied especially given the limited information provided with respect to the movement of money. If the appellant had a business it was unusual that they failed to provide any business account with the application or since their refusal. He questioned whether the personal accounts were suitable. There was inadequate information to determine the appellant's financial circumstances in Sri Lanka.
>
> 47. With respect to article 8 of the ECHR, Mr Graham stated that in some cases adult siblings can have a sufficiently strong bond between them. There was nothing to suggest that the sponsor's evidence was not credible. There was no reason to doubt that there was a strong relationship between the second appellant and her brother in the UK. He accepts that there was a justifiable reason for the appellants to want to come the UK. He accepts that there is still a justifiable reason for the appellants to want to come to the UK namely, to visit their nephew's grave, to visit the second appellant's father's grave, and to take part in the annual religious ceremony to mark the death of the second appellant's nephew. He accepts that the second appellants (sic) brother and her sister-in-law would have been traumatised with the death of their child and that they would have wanted moral and emotional support from the appellants. Mr Graham stated that he accepts that there are good and strong ties between the second appellant and her brother in the UK and that it is arguable that they may satisfy article 8 of the ECHR."

7. Further that the Judge had then gone on throughout the decision to consider what amounted to a "traditional family visit" where emotional ties had gone beyond the norm. This case is very similar to that of **Abbasi** and whilst ultimately the decision here might not be one that other Judges might come to it nonetheless was open to be made on the findings.

8. I find that that is the case. I have deliberately set out paragraphs 46 and 47 of the Judge's decision as I find that they do amount to a concession by the Home Office Presenting Officer that the Appellants have given credible evidence as to the existence of family life. That being the case Mr Whitwell's arguments in relation to the Judge erring so far as private life rights are concerned fall away. The Judge has then considered relevant authority and effectively carried out a balancing exercise before coming to the conclusions that he did. Whilst I appreciate Mr Whitwell's submissions

in relation to paragraphs 55 to 57 of the Judge's decision I nonetheless look at the appeal in the context of the concessions that I find have been by the Home Office Presenting Officer at hearing and in those circumstances conclude that the Judge was entitled to deal with the appeal in the way that he did and conclude that the Appellants should both succeed.

9. I emphasise that each case turns upon its own facts and here there is in my view a concession made by the Home Office Presenting Officer at hearing which entitled the Judge to come to a decision that was open to be made on the evidence.

**Conclusions**

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

I do not set aside the decision.

No anonymity direction is made.

Signed Date 10 July 2017

Deputy Upper Tribunal Judge Appleyard