



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/01191/2016

THE IMMIGRATION ACTS

Heard at Field House
On 19 June 2018

Decision & Reasons Promulgated
On 28 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

MR CLIVE ALLAN KRISHNAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOM DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Khan, Solicitor, iKon Law Solicitors & Advocates
For the Respondent: Mrs W Brocklesby, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is Mr Clive Allan Krishnan a national of Sri Lanka born on 16 December 1985 who appealed to the First-tier Tribunal against a decision by the respondent to refuse the appellant's application for leave to remain as a Tier 1 (Entrepreneur). The decision of the respondent was dated 15 February 2016 and asserted that the appellant did not have a right of appeal as the application was made on 28 February 2014 and the appellant's leave to remain expired on 20 June 2013. However, the appellant previously submitted an application for further leave to remain as a Tier 4 Migrant, on

22 March 2013, and this application was still pending when the further application was made and the appellant asserted that under Section 3C of the Immigration Act 1971, he had an in-country right of appeal as he had submitted a variation of his application and therefore Section 3C(5) applied; the appellant relied on the Court of Appeal **JH (Zimbabwe) [2009] EWCA Civ 78**.

Error of Law

2. It was conceded by Mrs Brocklesby that the appellant had submitted his original application in time and that there was no evidence that either application was invalid. Therefore she could see no reason why the appellant had not been given a right of appeal in line with Section 3C(5) and **JH (Zimbabwe)**. She conceded that there was a material error of law.
3. Judge of the First-tier Tribunal Obhi, in dismissing the appeal for want of jurisdiction, did not engage with the substantive issues. The First-tier Tribunal's determination contains an error of law capable of affecting the outcome of the appeal and is set aside by consent (Tribunal Procedure (Upper Tribunal) Rules 2008, Rule 40(3)(a)).
4. In light of the judicial fact-finding required the appeal is remitted to the First-tier Tribunal, other than Judge Obhi.

Directions

- (a) The appellant's representative indicated that the appellant is now no longer relying on his Tier 1 application but instead relies on the fact that he has ten years' residence, paragraph 276B of the Immigration Rules. The appellant's representative is to file and serve a consolidated bundle of evidence so that it is received no later than 14 days prior to the First-tier Tribunal hearing date. The appellant's bundle must address the appropriate Immigration Rule.
- (b) The appellant's representative must provide a chronology and skeleton argument addressing the relevant issues including the jurisdiction to consider the ten year Rule. The appellant is reminded that if any unreported Tribunal decisions are purportedly relied on, it is for the appellant to comply with the relevant Practice Directions.
- (c) The respondent to reply no later than seven days before the First-tier Tribunal hearing, to include the respondent's view of the appellant's claim that the First-tier Tribunal has jurisdiction to consider the appellant's ten years' residence application.

Any failure to comply with these directions may lead the First-tier Tribunal to exercise its powers to decide the appeal without an oral hearing, or to conclude that the defaulting party has no relevant information, evidence or submissions to provide.

Summary

The decision of the First-tier Tribunal contains an error of law and is set aside. The appeal is remitted to the First-tier Tribunal.

No anonymity direction was sought or is made.

Signed

Date: 25 June 2018

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

No fee award was sought or is made.

Signed

Date: 25 June 2018

Deputy Upper Tribunal Judge Hutchinson