



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/04507/2017**

**Appeal Numbers:**

**HU/04516/2017**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons  
Promulgated**

**On 21 October 2019**

**On 22 October 2019**

**Before**

**UPPER TRIBUNAL JUDGE KEKIĆ**

**Between**

**PRIYANTHA B N NAWARTHNE MUDIYANSELAGE  
HARSHEE DEEPAMALEE SURIARACHCHI  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr R Solomon, of Counsel, instructed by Chancery Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This appeal comes before me following the grant of permission to appeal by Upper Tribunal Judge S Smith on 9 September 2019, against the decision of First-tier Tribunal Judge E B Grant, to strike out the appeals for want of jurisdiction. The determination was promulgated on 21 May 2019.

2. The appellants are Sri Lankan nationals and sought leave to enable the second appellant to undergo an ovarian cystectomy and to complete IUI and IVF treatment. The application was refused on 27 February 2017 under paragraph 322(1) on the basis that it was for a purpose not covered by the rules. Moreover, the respondent noted that the surgery had been successfully completed and that the six months requested for IUI treatment had also passed. The application was also refused because the respondent considered that the first appellant had used a fraudulently obtained TOEIC certificate to obtain previous leave.
3. Appeals were lodged on 13 March 2017. The grounds raise article 8 and the appeal is ticked as being a human rights decision.
4. On 24 April 2019 (there were previous adjournments because the appellants' representatives had ceased to operate) First-tier Tribunal Judge Grant decided that there was no appealable decision as the appellants had not filed appeals on asylum or human rights grounds. She had regard to a letter from the appellants which purportedly stated that no protection or human rights claim was being made.
5. Permission to appeal was granted on the basis that the reference to human rights in that letter was to violations in Sri Lanka and arguably should have been read in the context of the making of a protection appeal. The judge considered that Judge Grant had arguably misinterpreted the said letter.

### **The Hearing**

6. At the commencement of the hearing, I indicated to the parties that I was minded to set aside the decision of Judge Grant on the basis that she erred in law in finding that there were no valid appeals. Ms Everett sensibly did not seek to resist that approach and Mr Solomon was content and had nothing to add. The first appellant was in attendance. He and his wife now have two children and Ms Everett confirmed that this would not be treated as a new matter for the purposes of the appeal hearing.

### **Discussion and Conclusions**

7. I now give my reasons for setting aside the decision of Judge Grant.

8. The appellants both filed their appeals with grounds which set out their article 8 claim. They also ticked the box on their appeal forms indicating that these were human rights appeals. The letter referred to by the judge is dated 30 May 2016 and was submitted to the respondent shortly after the making of the application for further leave to remain (for six months). The relevant part states: *"...it would be a grave and irreparable damage to both of our lives if we go back to Sri Lanka at this stage of my wife's treatments...Secondly, I have been living in United Kingdom for nearly six years and I have severe obstacles and impediments to go back to my home country, which is Sri Lanka and start my family life there. However, I'm not making any claim at this stage on my life threats or subject to violation of my human rights in Sri Lanka and I retain my rights to make any claim later if required on that ground"*.
9. The first difficulty with Judge Grant's decision is that this application was made by an unrepresented appellant and, therefore, some leeway should have been afforded to him in the interpretation of his claim. Nevertheless, it seems quite clear from the letter sent to the respondent that the appellant had relied upon compassionate matters and had raised private and family life concerns as part of his application. Indeed, the respondent considered whether leave to remain outside the rules was warranted when reaching her decision. The appellant's reference to human rights violations was patently meant to refer to violations in Sri Lanka and was made in the context of making an asylum claim.
10. More important, however, is the evidence that regardless of whether or not a human rights claim had been expressed in the application for leave, the issue is clearly raised, and at length, in the appellants' grounds of appeal. It is also relied on in the statement of additional grounds. There can be no question, therefore, that the appellants did intend to bring appeals on human rights grounds and that, in fact, they did so. As there has been no consideration of any of the grounds raised, although it has to be said that the period of leave sought has long since passed, it is appropriate for the matter to be decided by a judge of the First-tier Tribunal as there has been no consideration of any of the issues by a First-tier Tribunal Judge.
11. The appeal is remitted to the First-tier Tribunal for a fresh decision to be made on the human rights claim by any judge except Judge E B Grant.

**Directions**

12. No later than 7 working days prior to the next hearing, the appellants shall file a paginated bundle of all the documents they seek to rely on in support of their appeal hearing. The bundle shall include full witness statements for both appellants, birth certificates for their two children and a skeleton argument.
13. Further to Ms Everett's confirmation, the birth of the children shall not be treated as a new matter for the purposes of the appeal hearing.

**Decision**

14. The decision of the First-tier Tribunal is set aside. The matter is remitted for a fresh hearing to the First-tier Tribunal at Hatton Cross at a date to be arranged.

**Anonymity**

15. No request for an anonymity order was made.

Signed



Upper Tribunal Judge

Date: 21 October 2019