



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/05691/2018**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25 July 2019**

**Determination Promulgated  
On 2 August 2019**

**Before**

**Deputy Upper Tribunal Judge MANUELL**

**Between**

**Mr MOHAMED [M]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: In person

For the Respondent: Mr S Walker, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. Permission to appeal was refused to the Appellant and his wife in their linked Article 8 ECHR appeals by First-tier Tribunal Judge Grimmett on 2 May 2019. (The Appellant's wife, Mrs [NR], had appealed under reference HU/09865/2018.) The application was renewed to the Upper Tribunal for the Appellant only.
2. Permission to appeal was granted by Upper Tribunal Judge Eshun on 17 June 2019 against the decision to dismiss the Appellant's Article 8 ECHR appeal made by First-tier Tribunal Judge Kinnell in a decision and reasons promulgated on 23 January 2019. The Appellant and his wife are nationals of Sri Lanka. The Appellant had sought leave to remain under paragraph 276B of the Immigration Rules, i.e., 10 years' continuous lawful residence. His wife had applied as his dependant. Their applications were refused on 11 April 2018.
3. Judge Kinnell found that neither Appellant had shown that they met the Immigration Rules. He found that the Appellant had deliberately submitted false figures in his tax return, and that paragraph 322(5) of the Immigration Rules had been correctly applied: it was undesirable that the Appellant be granted leave to remain. Nor could either of the Appellants show that they satisfied the requirements of Appendix FM or paragraph 276ADE in any event: neither was a British Citizen or settled in the United Kingdom. At the date of application their three children did not meet the seven year requirement. Paragraph EX1 was inapplicable because there were no insurmountable obstacles to the continuation of family life in Sri Lanka, the country of nationality of both Appellants. It was reasonable for the children to go to Sri Lanka with their parents. There was no Article 8 ECHR disproportionality in such circumstances. Hence the linked appeals were dismissed.
4. Permission to appeal was granted by Upper Tribunal Judge Eshun because she considered it was arguable that the judge had failed to consider that the Appellant's eldest child was a qualifying child and arguably had failed to consider whether it was reasonable to expect the child to accompany the Appellant and their family to Sri Lanka.

5. There was no rule 24 notice from the Respondent but Mr Walker indicated at the start of the hearing that the appeal was opposed.
6. The Appellant who is now acting in person produced a letter dated 3 July 2019 from the solicitors who had previously been acting for him, which enclosed a copy of a letter dated 27 June 2019 from the Home Office. The letter was addressed to Miss [KI], born on 7 October 2010, the Appellant's eldest daughter. She was granted a period of 30 months limited leave to remain on the basis of Article 8 ECHR (private life). The tribunal explained to the Appellant that as this evidence post dated the First-tier Tribunal Judge's decision, it could not support an error of law finding. It was, however, open to the Appellant to make a fresh application to the Home Office based on the new situation.
7. Mr Walker for the Home Office attempted to contact a caseworker in case any view was taken as to withdrawal of the previous decision. It was not possible for him to obtain any instructions.
8. The hearing accordingly proceeded. There was nothing further which the Appellant wished to say. Mr Walker submitted that there was no error of law in the First-tier Tribunal decision which should stand.
9. It is not easy to see why permission to appeal was granted on the renewed permission to appeal application made for the Appellant alone. His appeal is wholly lacking in merit. There was no challenge to the judge's findings that paragraph 322(5) of the Immigration Rules applied and that paragraph 276B was not met. Both claims were dismissed by the judge with clear findings and sound reasons. They stand and are to the Appellant's obvious discredit.
10. The renewed grounds of appeal to the Upper Tribunal (dated 22 May 2019) are misleading. The Appellant's eldest child was *not* a qualifying child at the date of the Appellant's and his wife's application to the Home Office. The qualification requirement applicable under paragraph 276ADE of the Immigration Rules is as at the date of the application, as Judge Kimnell correctly stated in his determination. Thus the grant of permission to appeal was on a mistaken basis.

11. Moreover and in any event, the grant was plainly misconceived as the very experienced judge considered the reasonableness of return of the children in depth: see [32] onwards of the determination. He correctly directed himself in accordance with KO (Nigeria) [2018] UKSC 53, and at [36], with reference to Home Office policy. He observed “there is no other factor in this case more important than the best interests of the children”.
12. The key fact was the choice of the venue for the couple’s family life was not one which they could dictate absent compliance with the Immigration Rules or very compelling circumstances outside the rules, which the judge found did not exist. As noted above, the judge carefully considered the Appellant’s children’s best interests and reached sustainable conclusions as to the reasonableness of the children’s departure from the United Kingdom with their parents. In the tribunal’s judgment, the very experienced First-tier Tribunal judge produced a full and balanced determination, reflecting current law. The tribunal finds that there was no error of law and the onwards appeal must be dismissed.

### **DECISION**

The appeal to the Upper Tribunal is dismissed.

There was no material error of law in the First-tier Tribunal’s decision and reasons, which stands unchanged.

**Signed**

**Dated** 25 July 2019

**Deputy Upper Tribunal Judge Manuell**