



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

Appeal Numbers: HU/08610/2018
HU/08626/2018
& HU/08622/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 17 April 2019**

**Decision & Reasons Promulgated
On 21 June 2019**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**K K (FIRST APPELLANT)
T K (SECOND APPELLANT)
M K (THIRD APPELLANT)
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Martin, instructed by Indra Sebastian Solicitors
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer
(25/01/19)

Mr L Tarlow, Senior Home Office Presenting Officer
(17/04/19)

DECISION AND REASONS

1. The appellants appeal with permission against the decision of First-tier Tribunal Judge Mill promulgated on 26 October 2018 dismissing their

appeals against the decisions of the respondent to refuse their human rights claims.

2. The first appellant is married to the second appellant; the third appellant is their child. They were initially here with leave, in the case of the first appellant, as a student and then as a Tier 1 (Post-Study) Migrant, a general migrant and finally again as a student. The second appellant has been present here as a dependant of the first appellant, the third appellant was given leave as a dependant also.
3. Importantly in this case, the appellant's mother lives in the United Kingdom and although she is only 54 has a number of serious medical conditions, which are set out in the decision and in the medical evidence in the decision, particularly at paragraph 23(g). She is also in receipt of a Personal Independence Payment in respect both of daily living component and mobility component. Essentially the appellants' case comes down to this: that is that there is a family life between the first appellant at the and his mother if not also between her and the third appellant; and, that she requires the emotional and other presence of her son here to help her cope with her illness, which includes psychiatric problems and in day-to-day living.
4. The judge heard evidence and concluded that removal was proportionate, noting that the applicants did not meet the requirements of the Immigration Rules and concluding first at [25] that the first appellant's mother had not been found to be in need of direct care on a day-to-day basis, although she had been cared for at some point in the past. He found that some of the independent psychological report prepared was noteworthy but attached limited weight to it as it was based on a one-off review of the appellant and was conducted using a single formal quantitative test; that there were no reasons why the appellants could not return to Sri Lanka; that the first appellant's mother could chose to go there if she wanted to do so or to maintain a direct face to face relationship in that manner or that social ties could be preserved and maintained by indirect means including visits to and from Sri Lanka; and, that little weight could be attached to the private or family life of individuals which is accrued during the period of time they been here precariously. He concluded at [35] that there is nothing disproportionate or unduly harsh about the requirement for the appellants to be removed from the United Kingdom.
5. The appellants appealed against the decision making what I consider five specific points:
 - (i) that the judge had failed properly to make any finding as to whether family life existed between the first appellant and his mother;
 - (ii) that the judge had erred in his findings about the nature of the care necessary and the reasons why that has ceased

- (iii) that the judge had failed to consider the best interest of the child in terms of the closeness to his grandmother;
 - (iv) that the judge had made a mistake of fact in that he had referred to the appellant's mother being able to obtain protection from her younger son; and
 - (v) that the judge had erred in not putting proper weight on the psychological report.
6. Dealing with the first point I consider that the judge has, despite Mr Kotas' submissions with regards to paragraph [34], not answered the question as to whether there is family life between the first appellant and his mother. I accept that what is said at paragraph 34 is, as Mr Martin submitted, formulaic. There is no indication that the judge had considered whether family life exists elsewhere in the decision and there is no clear finding. Second, I consider that there is merit with regard to the second point in that the judge appears to have relied upon a Tribunal assessment in respect of the mother who was being assessed for a Personal Independence Payment, which of its nature is formulaic. It is correct, as is averred in the grounds at [6], that there was no reference to direct support and supervision. With regards to the third point, I accept that the judge did not make any findings with regards to the relationship between the third appellant and his grandmother, but I do not consider that point is of any materiality.
7. I consider that at paragraph [23(m)] the judge appeared to suggest that the appellant's mother has the ability to obtain protection from her younger son. The phrase is ambiguous. It could be read that she is able to get protection from him, as in he is supporting her, or it could be read that the first appellant's mother has the ability to be protected against him. It is unclear which is meant, but my reading of it is the latter, in that he could obtain protection against her, although that is not reasoned either way.
8. With regard to the psychiatric report, I agreed that there are some merits in the observations by the judge that the first appellant's mother is not obtaining treatment for depression and that it was also based on a one-off appointment. But it needs to be borne in mind what the contents of the report are. What the report does do is to explain and set out the closeness that exists between the first appellant and his mother and gives some importance to that which was not taken properly into account.
9. I am satisfied for these reasons that the decision involved the making on of an error of law in that the judge failed properly to make findings as to whether family life existed and also failing to explain properly why he did not attach weight to the report of Dr Da Costa.
10. The question then arises as to whether these errors are material. Mr Kotas makes a serious point in stating that in order to succeed in this case there

has to be shown to be undue harshness, that is the test and that is what the judge directed himself properly to at the end of his decision.

11. As against that and bearing in mind what was said in **Rajendran** the difficulty is in the nature of the two errors made. First, as to whether there is a family life and more importantly what the content of that family life was and, as Mr Martin submitted, the effect that there would be on the mother, and I do not consider that it could be said that it was inevitable that the judge would have concluded that there was not undue harshness in this case and accordingly I set aside the decision. The decision clearly needs to be remade.
12. The appeal was then adjourned until 17 April 2019.

Remaking the appeal

13. In remaking the appeal I heard evidence from the first appellant, his wife, and also from his mother.
14. The appellant adopted his witness statements and was cross-examined. He said that his mother's condition had decreased or had deteriorated over time and that nobody else assisted with care. He said that is why he and his wife look after her and that if they return to Sri Lanka there would be no care available for her in their village and he accepted that he had not made inquiries as to what was available. He said that it would not be possible to get the correct level of care that she required, it was not possible to get an appointment with a consultant even in a private hospital.
15. In re-examination, the appellant said that there would be outpatient treatment available but she would not get the level of care that she requires in this country.
16. In response to my questions regarding what happens on a typical day, the appellant said that he gets up about 6 o'clock. His wife then makes tea for the mother and takes her to the bathroom, assists her to change and then they have breakfast. She takes sixteen to eighteen different tablets a day and these are prepared for her. He said that her blood sugar has to be monitored and that three to four times a week he takes a blood sample from her. He is also responsible for administering insulin.
17. The appellants assert that his mother does not require oxygen 24 hours a day but does require it during a greater part of the day. He said that she also requires the use of a wheelchair, except for short distances.
18. The appellant said that his mother works weeks quite often during the night, at least twice, and has to be reassured. He said that there had been assistance from Social Services in the past in that the carer came in but that his mother was not happy with this and she only received half hour

slots which was not enough and that this help was not offered at the level of compassion that could be offered by family.

19. I then heard evidence from the appellant's mother who adopted her witness statements.
20. In cross-examination, she said that her health had deteriorated recently, in that she was unable to walk, her lung condition is getting worse and she is unable to sleep properly. She confirmed that she had received help from Social Services in the past but this was limited to one and a half hours per day but it had not been of the same quality as being provided by her son and daughter-in-law. She said that her life had been terrible in the past. She said it was not that she preferred her son and daughter-in-law to provide the care but that she requires full-time care and that she needs her son, daughter-in-law and grandchild to be with her to give her happiness which she had not had in the past.
21. There was no re-examination.
22. In response to my questions the appellant's mother said that it is her son who sorts out her medication for her. She said that she was not able to conduct the blood tests for her diabetes on her own, although she had been able to do this in the past, she no longer felt able.
23. Mr Tarlow submitted, relying on the refusal letter, that the appellant's mother was entitled to provision of assistance both by the NHS and from Social Services. He submitted that health visitors would be available to assist with her medication and other needs, that it has not been shown that there was a family life here. He submitted further that in any event, the public interest in immigration control was outweighed in this case and that the appellants could reintegrate into their life in Sri Lanka for the reasons given in the refusal letter.
24. Mr Martin submitted that in this case there was a family life between the appellant and his mother given both the physical and emotional dependence upon him that she has, as well as the difficulty of what she had suffered in the past. He submitted that in this case her quality of life would not be the same even were her physical needs to be met by Social Services and/or the NHS. There was significant evidence that she felt hopeless and that there is little purpose to her life without her son and his family around her. He submitted that although this would not amount to a suicide risk, there was a real risk that she would cease to take care of herself, her health deteriorating rapidly as a result.
25. Mr Martin submitted that in the facts of this case that the care provided in terms of mental health was such that it could not be provided by anyone other than her family. He submitted that the incidents of depression was confirmed by the medical notes and also the most recent report by Dr Decosta. He submitted that it would be disproportionate to expect the family to live in Sri Lanka separated from the mother and it would not be

reasonable to expect her to go and live there given the extent and nature of her medical conditions.

The Law

26. Section 117B of the 2002 Act

117B Article 8: public interest considerations applicable in all cases

- (1) The maintenance of effective immigration controls is in the public interest.
- (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
 - (a) are less of a burden on taxpayers, and
 - (b) are better able to integrate into society.
- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
 - (a) are not a burden on taxpayers, and
 - (b) are better able to integrate into society.
- (4) Little weight should be given to—
 - (a) a private life, or
 - (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.
- (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
- (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
 - (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
 - (b) it would not be reasonable to expect the child to leave the United Kingdom.

27. It is accepted that the appellants do not meet the requirements of the Immigration Rules.

28. Given the centrality of the appellant's mother to the factual matrix in this case, it is appropriate to start with a consideration of her current position.

The appellant's mother was married in 1981 but her husband deserted her after she became pregnant and she suffered a significant degree of stigma from neighbours and family as she was a single mother when he was born. She decided to leave Sri Lanka, leaving her son with her mother and to live with her until she died; he was then looked after by his aunt. The appellant's mother remarried in 1989 and moved to the United Kingdom in 1991 where she claimed asylum and was recognised as a refugee. She is now a British citizen. She suffered a significant degree of abuse at the hands of her husband who cut her and subjected her to significant domestic violence. Her second child was born in the United Kingdom but he is now a drug addict, an alcoholic and only comes to her home when he needs something or tries to take money from her or to sell something.

29. It was only after the first appellant entered the United Kingdom in 2010 to pursue a degree that he was reunited with his mother.
30. There was no challenge to this aspect of the claim and I accept the evidence as to this given that it is internally consistent, detailed and supported by the various medical reports and psychiatric reports.
31. The appellant's mother and his wife, as well as their child, live with the appellant's mother. The house is subject to a mortgage and the appellant contributes towards the payments.
32. I am satisfied that the appellant's mother has a number of serious medical complaints. As set out in a letter from her GP:

"She has a very complex medical history. She suffers from a combination of the following illnesses, giving her a poor quality of life and limited mobility. These include diffuse interstitial pulmonary fibrosis requiring home oxygen treatment and immunosuppressive treatment, diabetes mellitus, rheumatoid arthritis and hyperlipidaemia. As you will see from the attached list, she is on extensive medications, including micophenolate mofetil capsules and prednisolone. ... [I]n addition to the above problems, she also suffers from severe urinary incontinence which restricts her ability to go out. She is currently under the care of urogynecologists at Northwick Park Hospital and is on the waiting list for treatment.

More recently she has been diagnosed with glaucoma and is waiting to be seen by the ophthalmologists.

Mrs K is a vulnerable adult. One of her sons is a methadone user and her other son who has been a protective factor and who has been helping her I understand has recently been refused leave to stay in the UK."
33. It is also of note that since then the medical notes reveal that she has been diagnosed as suffering from severe depression and has been prescribed sertraline, an antidepressant. As at 28 February 2019 she appears to be in receipt of 18 different medications, all to be taken daily, as well as insulin to be injected as directed.

34. It is evident from her statement, again unchallenged, that the local Authority has provided her with an elevated and a special hospital bed, a bathroom commode, special chair, oxygen cylinder with a mask to take outside when travelling, a help chain, special railings and stand and sanitary pads.
35. I accept also from the evidence both from Mrs K and her son that she is assisted to leave bed in the morning and is bathed by the appellant's wife. She is also assisted to go to the toilet and in taking medication throughout the day. I accept also that she is unable to cook for herself given her arthritis, difficulty in standing and her use of oxygen.
36. I accept that in the past Social Services' care was provided but this was limited and that they were in a rush.
37. I accept also from Mrs K's evidence that her son, his wife and the child has now given her new meaning in her life and given her a reason for living. I accept that she has bonded with her grandson. She spends a lot of time with him.
38. Turning next to the unchallenged evidence from the psychologist, Dr Da Costa, that Mrs K has begun to have suicidal thoughts, feeling that if her son were to leave she just wants to die, believing she has not long to live as a result of her physical problems. She is described as suffering from hopelessness. It is apparent that there has been a deterioration in her mood between the two appointments.
39. I accept from this and the evidence put before me that there has been a deterioration in the mental health characterised in part by a depressive illness. I accept also that Mrs K's unhappy history of abuse has contributed to her mental ill health and that she was separated from her son for an extended period. It is in this context understandable that she does not wish to be alone and lonely again, having no relatives to turn to in the United Kingdom other than a son who is a drug addict and who turns up only to demand money from her. I accept also that her mental condition has been exacerbated through, as Dr Da Costa describes, the long-term effects of domestic violence. I accept also that the appellants are a huge protective factor for her and that their removal would, as Dr Da Costa opines, lead to a deterioration in mental and physical health.
40. Taking all of this evidence as a whole, I conclude that, unusually, there is such a degree of dependence in this case between the appellant's mother and the appellant such that there does exist a family life between them even though they are both adults. That is because Mrs K is significantly dependent emotionally and psychologically on her son for a number of reasons, including her past abuse, her lack of any other family to turn to and her feelings of guilt at having been separated from him at a very young age. She has also, I accept, become dependant on her son and daughter-in-law to provide her with care.

41. I accept also that there exist strong bonds between Mrs K, her daughter-in-law, and her only grandchild. There does not, however, appear to be the necessary degree of emotional dependence here for a family life to exist but that there is certainly a strong bond which operates in addition to the family life that clearly exists between the three appellants. It is therefore necessary to consider this as a family unit, that is the appellants and Mrs K.
42. I accept also that the first appellant would be significantly troubled were he to be separated from his mother, given her evident emotional dependence on him and her physical and mental ill health described in significant detail in the medical evidence before me. I bear in mind that Mrs K is a British citizen and is entitled to the help and support she receives in this country from the NHS and, Social Services and other agencies. I note also that she is in receipt of Personal Independence Payment, including the mobility allowance at the higher level.
43. If this were just a case of physical illness, then I consider that it would be possible for carers to come in, to administer medication, to bathe and dress Mrs K and to ensure that she eats and gets proper exercise. Arrangements could be put in place to ensure that she goes to medical appointments on time, that her blood is checked regularly, and that she is trained properly to administer her insulin. This would be a significant degree of intervention for a large part of the day and it is unclear that such a level of support would be available from the local Authority even taking into account what is available from Social Services, the NHS and health visitors.
44. What this would not, however, provide is the therapeutic help that the presence of the appellants in Mrs K's life provide her. I am satisfied from the medical evidence and the oral testimony that their presence with her is the reason that she wishes to stay alive despite her depression and numerous medical complaints which make it difficult for her to have any degree of mobility or independence, bearing in mind that absent the family she would require strangers to bathe her and to deal with her incontinence. I find that without this level of day-to-day care and presence of family that her life would be significantly worse and that her health, both physical and mental, is likely to deteriorate rapidly given her express will that she would simply want to die. That is not to say that she would take any active steps but equally failing to care for herself and allowing herself to neglect herself, as well as a possible return to her alcoholism, this may well occur.
45. There is little evidence to show what would or would not be available for Mrs K in Sri Lanka. She is from Sri Lanka; she speaks Tamil; she grew up there; and, she would have her immediate family around her. But I bear in mind that she is a British citizen. She is entitled to the level of treatment which she currently receives. I consider that with active management of a number of consultant physicians, as well as the GP all of this could only be

replicated at a considerable cost and I accept the evidence before me, which was not challenged, that the family would be unable to provide this were it even available in Sri Lanka, given the complexity and number of her conditions. I note also that the only home she has in the United Kingdom is subject to a mortgage.

46. Taking all of these factors into account I conclude, bearing in mind the practical realities of the situation that Mrs K could not reasonably be expected to go to live in Sri Lanka away from the medical support she has received for a number of years. Given also her lung condition and dependence on oxygen, as well as her other illnesses, it may be questionable whether she could in fact fly to Sri Lanka.
47. Accordingly, drawing these strands together, I conclude that it would be wholly unreasonable to expect Mrs K to relocate to Sri Lanka and that accordingly, the only place where the family life can continue to exist is within the United Kingdom.
48. I bear in mind that it is only in very compelling circumstances where, as here, the Immigration Rules are not met, that it would nonetheless be disproportionate bearing in mind the very strong public interest in the maintenance of immigration control, someone should not be removed. Such situation are the exception.
49. Given Mrs K's frail state of health, I consider that it would cause her a significant degree of anxiety, stress and ill health to require her to leave her situation in the United Kingdom where her physical health needs are met and to travel to Sri Lanka. I consider also that the effect of separating the family, requiring the appellants to relocate to Sri Lanka, would have a significant and serious effect on Mrs K. I accept, for the reasons set out above this would have a serious and immediate effect on her mental health and consequently on her ability to care for herself and her physical health. I accept the evidence that she would lose her purpose for living. She is understandably distressed by this and it is important to bear in mind that despite she is only 55 yet suffers from a number of debilitating ailments restricting her life to such an extent that her private life is in effect coterminous with her family life, that is the life she shares with the appellants. She has little or no interaction with anyone outside this, other than healthcare professionals.
50. I accept also that the impact on the appellants would be severe, particularly on the first appellant. Having lived with his mother and cared for her, he and his wife would be acutely aware of the effects a separation would have on her. I accept given their evidence, that this would have a serious impact on the first appellant himself, given the degree of support and wellbeing he has derived from now having been reunited with his mother, having been separated in the past and the strong emotional bond that exists between them.

51. I accept from the evidence presented that the first appellant speaks English. I accept also that he has qualifications and that he and his wife are not currently dependent on the state. He is employed. I accept that their family life has come into existence here when their situation was precarious given they had not achieved settled status and little weight could be attached thereto. Third, it is the family life in this case which makes the difference.
52. I accept also that the second and third appellants speak English and are accommodated in the first appellant's mother's home.
53. Taking all of these factors into account and viewing the evidence in the round, I am satisfied that on the particular and unusual circumstances in which the family dependency is a reason and the serious ill health of the mother that it would be a disproportionate interference with the family's right to respect for their family life to remove them to Sri Lanka.
54. Accordingly, for these reasons, I allow the appeal on human rights grounds.

Notice of Decision

- 1 The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
- 2 I remake the decision by allowing the appeal on human rights grounds.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 29 May 2019



Upper Tribunal Judge Rintoul

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