



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

Appeal Numbers: HU/13666/2018
HU/14435/2018

THE IMMIGRATION ACTS

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

**Decision & Reasons
Promulgated
On 13th August 2019**

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

**(1) CHANDIMA DILHANI BANDARA WICKRAMA
(2) KURUPPU ARACHIGE VISHMITHA DAMPATH RODRIGO
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Miss T Aziz, instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The first appellant is a Sri Lankan national who was born on 16th October 1970. She appeals with permission granted by Upper Tribunal Judge Smith against a decision which was issued by First-tier Tribunal Judge Oliver on 12th March 2019, dismissing her appeal against the respondent's refusal of leave to remain as a spouse.

2. The first appellant entered the United Kingdom in September 2010 with leave to remain as a student which was valid until October 2014. Following failed attempts to regularise her status she became an overstayer in the UK. She is said to have formed during that period a relationship with a dual national of Greece and the United Kingdom called [PI], who was born on 29th April 1941. I should say that the second appellant is the first appellant's son who was born on 10th January 2000.
3. In the letter of application to the Secretary of State the appellants' former representatives, Lupins Solicitors, asked for leave to remain under Appendix FM for the first appellant and her dependent son. The application letter is dated 30th May 2017 and is exceedingly detailed. That is not a criticism of the author of that letter, it is plainly a document which is of assistance.
4. The case as presented to the Secretary of State was primarily presented on the basis that the first appellant satisfied the requirements of the Ten Year Route in Appendix FM, that is to say that she had a genuine and subsisting relationship with a British national and that there were insurmountable obstacles to the relationship between the first appellant and Mr [I] continuing in Sri Lanka. Those submissions were predicated on Mr [I]'s state of health, which was described at some length in the letter from Lupins Solicitors. The Secretary of State was not satisfied as to the relationship and in the alternative was not satisfied that the relationship could not continue in Sri Lanka. The first appellant gave notice of appeal and the appeal came before Judge Oliver on 13th February 2019.
5. A substantial bundle of documents was presented to Judge Oliver directed to the questions of whether or not the relationship was genuine and subsisting and whether there were insurmountable obstacles to the relationship continuing elsewhere.
6. Having heard oral evidence and reviewed that documentary evidence Judge Oliver came to conclusions in relation to those two issues, in particular at [30] and [33] of his decision. His conclusion at [30] rehearses the difference in age between first appellant and sponsor and considers the submission that the relationship was more akin to one of carer and patient as opposed to being partners. Unfortunately, having rehearsed those objections, the judge failed to reach a clear decision on whether or not there was a genuine and subsisting relationship between the parties. Mr Bramble accepted that there was no clear finding in that respect. Unfortunately, the conclusion at [33] in relation to paragraph EX.1.(b) of Appendix FM is equally unclear. Again, that much is accepted by Mr Bramble before me. The paragraph begins with the statement "Mr [I] cannot leave for medical reasons and does not have to leave", but the remaining part of that paragraph reaches no clear finding whatsoever on the straightforward question of whether or not there would be serious hardship experienced by Mr [I] in the event that he was required to live with the first appellant in Sri Lanka.

7. It follows as a result of these errors that the decision of Judge Oliver cannot stand. There is no clear resolution of the issues which arise under Appendix FM, as a result of which there is no adequate consideration - in light of the Court of Appeal's decision in TZ (Pakistan) [2018] EWCA Civ 1109 - of whether the appeal was to be allowed on human rights grounds because the requirements of the Ten Year Route were satisfied. I therefore set aside Judge Oliver's decision and have concluded that the appropriate course is for the decision to be remade de novo.
8. The question then arises under Section 12 of the Tribunal, Courts and Enforcements Act 2007 whether the correct course is for the appeal to be remitted to the First-tier Tribunal to be reheard *de novo* at Hatton Cross or whether it should be retained here in the Upper Tribunal. I come to the conclusion with the concurrence of both representatives that the correct course is the former option. I do so because the hearing in front of Judge Oliver did not lead to any adequate resolution of the issues; because fresh findings of fact need to be made on all relevant issues; and in particular because I have been presented with a letter from the Home Office to the first appellant dated 23rd July 2019. This letter was issued in response to the appellant and the sponsor giving an indication to the Registrar that they propose to marry in this country. The letter states that there is to be an investigation under Section 48 of the Immigration Act 2014 as to whether the relationship is genuine. Both Miss Aziz and Mr Bramble before me today have submitted that the appropriate course, in light of that letter, is to permit those enquiries to take place before any further decision is made on this appeal. Miss Aziz has told me that in her experience a decision should follow three to four weeks after the date of the interview and the date of the interview in this particular case is 30th July 2019.

Notice of Decision

9. The decision of Judge Oliver is set aside. I order that the appeal be remitted to the First-tier Tribunal, to be heard de novo by a judge other than Judge Oliver. That hearing is not to be listed before the second week in September 2019.
10. No anonymity direction is made.



Upper Tribunal Judge M J Blundell

6 August 2019

