



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number: PA/08363/2018 (V)**

**THE IMMIGRATION ACTS**

**Heard at George House, Edinburgh  
by *Skype for Business*  
on 16 December 2020**

**Decision & Reasons  
Promulgated  
On 31 December 2020**

**Before**

**UT JUDGE MACLEMAN**

Between

**SARASWATHY [S]**

and

Appellant

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

Respondent

*For the Appellant: Mr S Winter, Advocate, instructed by Jain, Neil & Ruddy, Solicitors  
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer*

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Sri Lanka, born on 4 March 1943. She entered the UK on false documents in 2010 and made an asylum claim, which was refused. Appeal proceedings (reference AA/09885/2010) were exhausted in 2011.
2. The appellant made further submissions to the respondent on grounds of her medical condition and of her family life with her daughter, her daughter's husband, and their children. By a decision dated 5 June 2018, the respondent found that she had no right to remain in the UK.
3. FtT Judge Montgomery refused the appellant's appeal by a decision promulgated on 12 February 2019.

4. The FtT and the UT refused permission to appeal. The appellant petitioned the Court of Session. Parties entered into a joint minute:

[1] The decision of the FtT ... arguably erred in its approach to the [appellant's] case under article 8 ... by arguably focusing only on the question of functional impairment as opposed to dependency in the broader *Kugathas* sense in order to determine whether there was family life between the [appellant] and her relatives;

[2] The decision of the UT [refusing permission] amounted to an error of law. The UT did not identify that there was an arguable ground ... The UT appeared to conflate the cases under articles 3 and 8 in refusing permission [and] ... did not demonstrate anxious scrutiny in considering whether the FtT erred ... in respect of ... article 8...

[4] It is ... not necessary ... for the Court to consider the other issues raised ... parties reserve their respective positions [without concessions] ...

5. On 10 March 2020 the Vice President of the UT granted permission, in light of the Court's interlocutor and the joint minute.
6. On 23 September 2020 the appellant filed a response to directions issued by the UT, and sought a remote hearing.
7. On 7 October 2020 the SSHD filed a response, also seeking a remote hearing.
8. I conducted the hearing on 16 December from George House. Representatives attended remotely. The technology enabled an effective hearing.
9. At [7] of her response the SSHD accepts that there is error (not merely arguable error) in relation to the assessment of the article 8 claim only.
10. Parties agreed that the case fell to be remitted to the FtT for a hearing which would focus firstly on the question whether the relationships of the appellant in the UK constitute family life within the scope of article 8.
11. The leading cases on article 8 do not include an example of a breach on medical grounds only, but they have not closed the door on that possibility. The most relevant passage is perhaps in *MM* [2012] EWCA Civ 279 from [16] - [24], where Moses LJ said:

The only cases I can foresee where the absence of adequate medical treatment in the country to which a person is to be deported will be relevant to Article 8, is where it is an additional factor to be weighed in the balance, with other factors which by themselves engage Article 8. Suppose, in this case, the appellant had established firm family ties in this country, then the availability of continuing medical treatment here, coupled with his dependence on the family here for support, together establish 'private life' under Article 8. That conclusion would not involve a comparison between medical facilities here and those in Zimbabwe. Such a finding would not offend the principle expressed above that the United Kingdom is under no Convention obligation to provide medical treatment here when it is not available in the country to which the appellant is to be deported.

12. It appears to be open to the appellant, if she establishes family life, to rely on her medical condition as a factor in the proportionality of her removal. The target remains a high one, but there is a differentiation from a case which turns on article 3 only.

13. The SSHD's submission at [8] - [17] argues that the FtT's conclusion on article 3 does not err. However, having heard from representatives, I decided that it would be narrow and artificial to restrict the re-hearing, which is likely to be on updated evidence, to article 8.
14. The decision of the FtT is set aside and stands only as a record of what was said at the hearing. The case is remitted for an entirely fresh hearing, not before Judge Montgomery.
15. No anonymity direction has been requested or made.



17 December 2020  
UT Judge Macleman

#### **NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.