



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/14976/2013

THE IMMIGRATION ACTS

Heard at Field House
On 21 February 2014

Judgment delivered orally at
hearing
Determination Promulgated
On 4 March 2014

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

MRS IRANIYAMMA MARKANDU

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Blundell, Counsel instructed by Theva Solicitors
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Sri Lanka, born on 19 July 1956. She arrived in the UK as a visitor on 11 September 2012, with two of her grandchildren. Unfortunately, whilst

she was here her husband in Sri Lanka died, in January 2013. The appellant applied for further leave to remain but the application was refused. Her appeal against that decision came before First-tier Judge Rowlands, at Hatton Cross, on 18 November 2013 whereby he dismissed the appeal under the Immigration Rules and under Article 8 of the ECHR. Permission to appeal was granted by a Judge of the First-tier Tribunal and in granting permission the judge raised certain issues to which I shall refer in this judgment.

2. I deal firstly with the written grounds of appeal. It is said in the grounds that the judge erred in law because he failed to consider that the appellant has strong family ties with her daughters and granddaughters with whom she is living.
3. Dealing firstly with the Immigration Rules, it is accepted that the appellant was not able to meet the requirements of the Immigration Rules under paragraph 276ADE or under Appendix FM. That concession was specifically made before me by Mr Blundell and is a concession that is rightly made. The First-tier Judge also found that the appellant could not meet the requirements and he was undoubtedly correct in that assessment.
4. In the grant of permission the First-tier Judge made reference to paragraph 317 which was a paragraph of the Immigration Rules which the judge considered. It was suggested in the grant of permission that that may indicate an arguable material error of law in that the judge was not concerned to consider paragraph 317, presumably because it did not apply. Again it is accepted that paragraph 317 had no application to this appeal because at the time of the application and the decision it had been superseded.
5. As to whether there was any error of law in the First-tier Judge having considered paragraph 317, I am not satisfied that there is. Paragraph 317 was argued before him and he was expressly asked to consider it. Having considered it he decided that the appellant was not able to meet its requirements. If paragraph 317 had applied he would undoubtedly have been correct about that but since paragraph 317 has no application to this appeal, even if it could be said that he was wrong to have considered it, it is not an error that is material.
6. Moving on then to deal with Article 8. The focus for the argument in the grounds and developed in submissions before me by Mr Blundell was the contention that the judge did not have sufficient regard for, or did not appropriately focus on, the best interests of the children as required by Section 55 of the Borders, Citizenship and Immigration Act 2009. It is true that the judge did not expressly refer to Section 55 but it is clear from the determination, for example at [38] and [39], that he had the interests of the children well in mind. He referred to "welfare issues" and took into account the relationship between the appellant and the grandchildren. However, the evidence was that the grandchildren live with their mother who it seems has given up her job and now looks after them on a full-time basis.
7. Judge Rowlands did accept that there was a relationship of family life between the appellant, her daughter, son-in-law and grandchildren and that removal would have

an effect on family life so as to engage Article 8. That is clear from [36] of the determination.

8. It is accepted up to a point that the judge was entitled to make the findings that he did at [32] of the determination in relation to the credibility of the witnesses. In terms of what family the appellant does or does not have in Sri Lanka, the appellant's case was that she had no relatives there but the judge did not accept that she was being truthful about that. Mr Blundell submitted that in making that assessment the judge ought to have taken into account evidence that was before him in the form of money transfer receipts which showed that before she came to the UK she was in receipt of funds from, it seems, her son-in-law in the UK. The judge did not refer in the determination to those money transfer receipts and there is evidence in the appellant's bundle, the pages of which I have been referred to, which show that money was sent to her. Ms Isherwood's submission was that there is no indication of what those funds were used for and it had to be borne in mind that the funds were sent to her at a time when she was looking after her grandchildren.
9. Whilst I accept that the judge did not refer to those money transfer receipts I am not satisfied that that has any material impact on his findings. He was entitled to come to the conclusions that he did about the appellant's circumstances on return to Sri Lanka in terms of what family she had there. At [12], for example, he said that the appellant accepted that there was no evidence provided to show that another daughter of hers was no longer in Sri Lanka.
10. The judge did make findings about the relationship between the appellant and her grandchildren. He did make an assessment of what effect it would have on them for her to leave the United Kingdom. There was a paucity of evidence before him which suggested that there would be any significant adverse effect on them by her removal. That is not the way he expressed it but it was undoubtedly the conclusion that he came to. In referring to "welfare issues" it is said by Mr Blundell that that indicates a misunderstanding or misrepresentation of the duty to have regard to the best interests of the children under Section 55. I do not agree with that submission. It seems to me that the judge did focus on the primary argument in relation to Article 8 which he recognised as being the effect of the appellant's removal on the relationship with her grandchildren.
11. Having disposed of the appeal under the Immigration Rules and having considered Article 8 in all its aspects the judge dismissed the appeal. I am satisfied that his proportionality assessment was free from any error of law or any that could have affected the outcome of the appeal.
12. He referred to the fact that the appellant was relatively young, only 57 years of age, was able to work and that she had family back in Sri Lanka. He came to the conclusion that there was no reason why she could not return there and I am satisfied that that was a conclusion that was open to him. He referred also to health conditions that the appellant has, although again there was no indication that she was not able to receive treatment for those conditions on her return to Sri Lanka.

13. In conclusion therefore, I am not satisfied that there is any error of law in the decision of the First-tier Tribunal and the decision to dismiss the appeal under the Immigration Rules and Article 8 therefore stands.

Upper Tribunal Judge Kopieczek

27/02/14