



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/12057/2013

**THE IMMIGRATION ACTS**

Heard at Field House	Determination Promulgated
On 10 <sup>th</sup> June 2014	On 1 <sup>st</sup> July 2014

Before  
Deputy Upper Tribunal Judge Rimington

Between

The Entry Clearance Officer - Chennai

Appellant

and

Mr Karunamuni Kaween Tharindu Nilanka Silva  
(Anonymity direction (NOT) made)

Respondent

**Representation:**

For the Appellant: Mr Kevin Waters, Sponsor  
For the Respondent: Mr Nath, Home Office Presenting Officer

**DETERMINATION AND REASONS**

**The Appellant**

1. For the purposes of this appeal I shall refer to the parties as they were before the First Tier Tribunal that is Mr Silva as the appellant and the Secretary of State as the respondent.
2. The appellant is a citizen of Sri Lanka born on 21<sup>st</sup> December 1991 and he appealed against the refusal of the Entry Clearance Officer dated 8<sup>th</sup> May 2013 to grant him a sports' visit visa.

3. His application was refused on the basis of paragraphs 46 M and 320 of the Immigration Rules. The objections were set out in a full one page decision by the Entry Clearance Officer (ECO), who recorded that the appellant had submitted with the application two letters from Tissa Central College dated 27<sup>th</sup> January 2013 which stated that he was attached to the school as an assistant cricket coach and that he had been granted leave to travel to the UK. He submitted a document from Tissa College claiming that he received an income of Rs 20,000 (£104.17) per month from Tissa College. Verification checks were made and the employment documents were found to be false.
4. The ECO refused the application further to Paragraph 320 (7A) and noted that future applications may also be refused. The ECO was not satisfied in view of the false documents submitted that the appellant was a genuine visitor.
5. The ECO recorded that the right of appeal was limited to grounds referred to in Section 84(1)(c) of the Nationality Immigration and Asylum Act 2002 that is to human rights grounds or racial discrimination grounds.
6. First Tier Tribunal Judge Hussain allowed the appeal on 20<sup>th</sup> March 2014.
7. Application for permission to appeal was made on the basis that the Judge correctly directed himself as to his jurisdiction namely that because the appellant was not a family visitor his right of appeal was limited to human rights grounds but nevertheless he was of the view that the appellant had succeeded under the Immigration Rules. This was an error of law.
8. Permission to appeal was granted to the respondent by FTT Judge Landes.

#### Conclusions

9. Mr Nath submitted that the appellant had a right of appeal but it was limited only to human rights grounds. The reasoning in relation to Article 8 was insufficient and if there was strength to the ties it must be shown in greater detail.
10. Mr Waters gave evidence on behalf of the appellant and confirmed that he had no original of the further letter submitted from Tissa College dated 21<sup>st</sup> May 2013 confirming that the appellant was employed by that college. He had been informed by the appellant that he was employed by the College. He now had an alternative job but at the time he was working as a cricket coach.

11. Mr Waters stated that the last time he saw the appellant was in 2012. The appellant had stayed with Mr Waters and his partner from June to September 2010 and Mr Waters and his partner had had two subsequent holidays with him in Sri Lanka. His partner's son had accompanied them on the first holiday (the last being in 2012). Both holidays lasted for a couple of weeks. The appellant had his mother two brothers and younger sister in Sri Lanka and was working. He had no medical conditions.
12. The judge correctly pointed out that the ECO refused the application further to paragraph 320 (7A) and that the verification reports regarding the false documents had not been submitted to the Tribunal. The First Tier Tribunal Judge also correctly pointed out that the right of appeal was limited to human rights grounds and it is right that the appellant appealed on human rights grounds. However the judge proceeded to allow the appeal under the Immigration Rules [22] having pointed out that the grounds of appeal were restricted. It may be a factor to take into account that the allegation of false documents was not substantiated but it was an error of law to determine the appeal on the basis of the immigration rules.
13. The fact is that the jurisdiction of the appeal was limited. I therefore remake the decision on the basis of the human rights appeal.
14. The grounds for refusal under the Immigration Rules are mandatory and there is no appeal in this jurisdiction.
15. The question is whether the Article 8 is even engaged. As stated in paragraph 54 of **Patel and ors v SSHD [2013] UKSC 72**  
*'The most authoritative guidance on the correct approach of the Tribunal to Article 8 remains that of Lord Bingham in Huang. In the passage cited by Burnton LJ Lord Bingham observed that the rules are designed to identify those to whom 'on grounds such as kinship and family relationship and dependence leave to enter should be granted and that such rules to be administratively workable require that a line be drawn somewhere'.*
16. First this is not an application further to Part 8 of the Immigration Rules and the question of the necessity of having good grounds to consider the matter outside the rules is not relevant. However when posing the questions raised in **Razgar v SSHD [2004] UKHL 27**. I am not persuaded that a right to a family or private life has been established. There is no claim to any family relationship here. The connection is through the cricket team of which Mr Waters a committee member. I can accept that the appellant may be a fine cricketer and that a firm friendship has been formed but that does not elevate the relationship to one which is protected by article 8. There is no dependency and there was none at the date of the decision which is relevant for my purposes.

The appellant has his own family in Sri Lanka and the last time the appellant and Sponsor met was in 2012. The sponsor and his partner looked after the appellant in 2010 and since then have spent two short holidays in Sri Lanka. The appellant's family life is in Sri Lanka and at the time of the decision his private life was also in Sri Lanka. He has no medical conditions.

17. **Patel** concluded that the right to a private life did not extend, without other relevant circumstances, to protection of a right to education and if that is the case it must be so for the right to play cricket however important it is to some sections of the community.
18. I can agree that whether the appellant had his application fairly refused by the ECO on the documentation could be a matter taken into the proportionality exercise (I note that Mr Waters did not have the original documentation and was relying on information supplied to him by the appellant) but this stage is not reached in this appeal. The first stage of Razgar needs to be satisfied as to whether there is any private life engaged. In this case, I find it was not.
19. The First-tier Tribunal Judge made an error of law and I remake the decision and dismiss the appeal.

### **Order**

There is no appeal under the Immigration Rules

The appellant's appeal is dismissed on Human Rights grounds

Date 28th June 2014

Deputy Upper Tribunal Judge H Rimington