



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

Appeal Number: AA/03985/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 20 November 2015**

**Promulgated**

**On 7 December 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**GAYANI NILUKA MANIKKAARACHCHI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Gilbert, Counsel, instructed by Tamil Welfare Association

For the Respondent: Ms A Fijiwala, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. This is an appeal by the Appellant, a national of Sri Lanka, against the decision of First-tier Tribunal Judge Beg (Judge Beg), promulgated on 25 August 2015, in which she dismissed the Appellant's appeal. That appeal was against the Respondent's decision of 20 February 2015, seeking to remove the Appellant from the United Kingdom by way of directions under section 10 of the Immigration and Asylum Act 1999.

### **Judge Beg's decision**

2. Before the First-tier Tribunal, the Appellant's case was based upon a claim for international protection and Article 8.
3. Judge Beg dealt with the protection claim and, for reasons set out in paragraphs 25-36 of her decision, found the Appellant to be wholly incredible. The appeal was dismissed on this basis.
4. In considering Article 8, Judge Beg concluded, for the same reasons as set out in the Respondent's reasons letter, that the Appellant could not satisfy the relevant Immigration Rules (paragraph 37). She went on to consider the Article 8 claim outside of the Rules, directing herself to Singh [2015] EWCA Civ 74, SS (Congo) [2015] EWCA Civ 387, Razgar [2004] UKHL 27, Huang [2007] UKHL 11, ZH (Tanzania) [2011] UKSC 4, and EV (Philippines) [2014] EWCA Civ 874, amongst other authorities. She also directed herself to section 55 of the BCI Act 2009. It was found that the Appellant had a genuine relationship with her husband, a Sri Lankan national with Discretionary leave in this country, and that the couple had two children, born in 2012 and 2015. Having concluded (at least implicitly) that there was family life and that the Respondent's decision would interfere with that life, section 117B of the 2002 Act was applied to the Appellant's circumstances. The judge took into account the precarious nature of the Appellant's status during the relevant time. Judge Beg found that the Appellant's husband and children could all go to Sri Lanka together, bearing in mind the children's young ages and the husband's circumstances. It was said that the husband had a "choice" as to whether he would in fact travel to Sri Lanka (paragraphs 46 and 49). Thus, the appeal was dismissed on Article 8 grounds.

### **The grounds of appeal**

5. It is right to say that the grounds of appeal focus on the husband's position. It is said that Judge Beg failed to consider his circumstances adequately or at all. There is a secondary issue taken in respect of whether the Respondent should have included the Appellant as a dependent upon her husband's application for further Discretionary Leave.
6. There was (and is) no challenge to the judge's conclusions on the protection claim.
7. Permission to appeal was granted by First-tier Tribunal Judge Cox on 18 September 2015.

### **The hearing before me**

8. Mr Gilbert relied on the grounds of appeal. In respect of the central issue of the husband, Mr Gilbert submitted that essentially, Judge Beg had failed

to consider the question of whether it was “reasonable” for him to leave the United Kingdom. In respect of the point relating to the Appellant as a dependent on the husband’s application, it was submitted that the judge should have taken into account the fact that the Respondent had acted unfairly or irrationally in refusing to accept her in this capacity. In other words, the judge herself should have reached a conclusion, based upon public law grounds that the Respondent had acted unlawfully. In fact, the judge did not deal with this issue in her decision at all.

9. Ms Fijiwala submitted in essence that Judge Beg had taken all relevant matters into account. Use of the word “choice” clearly amounted to a conclusion that the husband could reasonably be expected to return to Sri Lanka.

### **Decision on error of law**

10. I find that there are no material errors of law in the decision of Judge Beg.
11. The first thing to say is that the judge directed herself impeccably in law, both in respect of relevant case-law and statutory provisions. She was plainly fully aware of the appropriate legal framework within which she was conducting her assessment of the Article 8 claim both inside and outside of the Rules. This is relevant to the challenge before me, as it is a strong indicator that the judge applied the very legal framework to which she had directed herself. This includes the ‘reasonableness’ question which can be found in Huang, amongst other leading decisions.
12. Second, the judge clearly, and correctly, took account of the husband’s own status in this country, and that of the Appellant, when the relationship began and thereafter (paragraph 44). The position of both was precarious throughout the relevant period (the husband having only Discretionary Leave, and the Appellant being a student and then an overstayer). The judge considered the fact that the husband was never a refugee and would not face a risk on return to Sri Lanka (paragraph 46). She had previously found that the husband’s own family in Sri Lanka would be in a position to provide support on return (paragraph 36). There is a clear finding that both children could readily adapt to life in Sri Lanka, and that a move for them would not be contrary to their best interests (paragraph 48). This conclusion has not been challenged by the Appellant at any stage.
13. Third, whilst it is correct that Judge Beg did not state in terms that it would be “reasonable” for the husband to return to Sri Lanka, it is clear to me that on a sensible reading of the decision as a whole, she was in substance reaching this precise conclusion when stating, on two separate occasions, that it was entirely a matter of “choice” as to whether he went or not. There is simply no error here at all.
14. Fourth, even if the judge had erred in not using the word “reasonable”, on the unchallenged findings made there was only one sustainable outcome;

that it was reasonable for the husband to return to Sri Lanka. Thus, any error was clearly not material.

15. Fifth, the point made in the grounds about the Appellant's own immigration history is without merit. It is right that her record was not "appalling". However, the only leave she ever had was a student, and she had then overstayed. Judge Beg was fully conscious of this, and specifically applied section 117B(4) and (5), as she was bound to do.
16. Sixth, the issue concerning the Respondent's refusal to treat the Appellant as a dependent upon her husband's Discretionary Leave application is misconceived. It is clear from the evidence before me that the Respondent applied her policy on dependents in this case. There was a discretion as to whether or not any particular individual should be treated as a dependent. I appreciate that judicial review proceedings were contemplated by the Appellant in respect of this particular decision, and that legal aid was refused. It is also true that Judge Beg does not expressly deal with the matter in her decision, although the point was made in the Appellant's skeleton argument before her.
17. However, in the first instance, such matters are for the judicial review jurisdiction, not that of statutory appeal. The refusal of legal aid could itself have been challenged.
18. More importantly for the purposes of the judge's decision, It is very to see how Judge Beg would have been entitled to make her own finding on an issue in respect of which she had no inherent jurisdiction. Even if she had been, having regard to the terms of the policy in question, the nature of public law grounds as they apply in judicial review, and the evidence before the judge, there was no realistic prospect of a favourable conclusion being reached. Even if I was wrong about this, I can see no conceivable way in which a conclusion that the Respondent had acted irrationally in respect of the dependent issue would have, in itself, outweighed all the other factors set out in the decision and the high threshold applicable to Article 8 cases assessed outside of the Rules. Thus, at every stage of the analysis, the judge's failure to expressly address the point was not an error at all or was immaterial to the outcome of the appeal.

### **Anonymity**

19. I make no direction. I note that none was made by the First-tier Tribunal.

### **Decision**

**The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.**

**The Appellant's appeal to the Upper Tribunal is dismissed.**

**The decision of the First-tier Tribunal stands.**

Signed

Date: 2 December 2015

H B Norton-Taylor  
Deputy Judge of the Upper Tribunal

**TO THE RESPONDENT**  
**FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date: 2 December 2015

Judge H B Norton-Taylor

Deputy Judge of the Upper Tribunal