



**Upper Tribunal
(Immigration and Asylum Chamber)**
IA/09423/2014

Appeal Number:

THE IMMIGRATION ACTS

Heard at: Field House
On: 11th February 2015

**Determination
Promulgated
On: 31st March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

**Rajeev Mohan de Silva Sandaradura
(no anonymity direction made)**

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mr Harris, Counsel instructed by Nag Law Solicitors
For the Respondent: Ms Everett, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Sri Lanka date of birth 19th March 1981. His wife and minor child are treated as his dependents for the purpose of this appeal. He appeals with permission the decision of the First-tier Tribunal (Judge Ghani) to dismiss his appeal against a decision to remove him from the United Kingdom pursuant to s10 of the Immigration and Asylum Act 1999.
2. The Appellant has been in the United Kingdom a long time. He arrived in 2003 and made various successful applications for leave to remain as a student, then as a Tier 1 Entrepreneur. The decision under appeal to the First-tier Tribunal was a refusal decision arising from the Respondent's refusal to grant the Appellant indefinite leave to remain on the basis of his lawful long residence. The Respondent had found

that the Appellant could not succeed under the 'ten year' rule because there had been breaks in the continuity of his lawful leave. The First-tier Tribunal upheld the Respondent's analysis that there had been breaks, some of them quite lengthy. There is no appeal against that decision.

3. The alternative ground of appeal before the First-tier Tribunal was that the Appellant and his family should be granted leave on the basis that their removal from the United Kingdom would be a disproportionate interference with the private lives that they had established since their arrival. The Tribunal considered the evidence that the Appellant suffered from a rare genetic condition known as Berger's Disease, which affects his kidneys; regard was had to the fact that his son, aged four at the date of the determination, had been born in the UK and had lived here all his life; the family in Sri Lanka were living in straightened circumstances and were largely dependent on remittances sent from relatives abroad and that the Appellant himself had been here since 2003. Against all of these factors was weighed the fact that the Appellant could never have had any expectation that he would be permitted to stay permanently in the UK, he still had close connections to Sri Lanka including his parents and had visited (with his son) as recently as 2012, there was no evidence to suggest that he would not receive treatment in Sri Lanka (as in fact his brother had done) and that his son would be able, at his young age, to learn Sinhalese, adapt and receive an education in Sri Lanka. Having considered all of these factors the First-tier Tribunal found the decision to remove to be proportionate and lawful, and the appeals were accordingly dismissed.
4. The Appellant has permission to appeal¹ on the grounds that the First-tier Tribunal arguably erred in failing to make express findings on the best interest of the child contrary to the guidance in ZH (Tanzania) [2011] UKSC 4.

No Error of Law

5. I am grateful to both parties for their careful and helpful submissions.
6. It is correct to say that this determination nowhere contains the words "I find that the best interests of the Appellant's son are...". However having read this careful and comprehensive determination as a whole it is apparent that the Tribunal was addressing itself to that matter at paragraph 25:

"The case law of course recognises that there is a need to safeguard and promote the welfare of children who are in the United Kingdom. The Respondent maintains that the Immigration Rules as they stand currently, incorporate this

¹ Granted on the 13th November 2014 by First-tier Tribunal Levin

aspect and in particular the requirements of s55 of the Borders, Citizenship and Immigration Act 2009. The Courts have of course recognised that the welfare of the child is not a factor of limitless importance in the sense that it will prevail over all other considerations. It is a factor however that must rank higher than any other. Where the best interests of the child clearly favour a certain course, that course should be followed unless countervailing factors of considerable force displace them. The Appellant's child is only aged 4. He has recently commenced schooling. Although his parents try and speak to him in Sinhalese, he does not respond. There is no reason why the child would not be able to understand and learn Sinhalese language if surrounded by people who speak the language. The child is clearly at an adaptable age. The Appellant has confirmed that there is private education available in Sri Lanka. The Appellant maintains that because he has not resided in Sri Lanka for the last 5 years, his child will not be able to secure a place in school. However there is no objective evidence to confirm this...."

7. If the Tribunal erred in not completing this paragraph with an unambiguous finding on where the child's best interests lay, I am satisfied that it is not an error that can have had any material effect on the outcome of this appeal. It was clear where the Tribunal's thinking lay. A very young child with no significant health concerns, with the support of his parents (and grandparents) and an ability to access education would not face any real difficulties in adapting to life in his country of nationality. Even if it could have been established that disruption of the nascent private life of a four year old would be contrary to his best interests, it could not, in light of the Judge's findings about his life in Sri Lanka, be found to be so contrary to his best interests so as to render his removal disproportionate: EV (Philippines) [2014] EWCA Civ 874.

Decision

8. The determination of the First-tier Tribunal contains no error of law and it is upheld.

Deputy Upper Tribunal Judge Bruce
30th March

2015