



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/17448/2014

THE IMMIGRATION ACTS

Heard at Field House
On 17 June 2015

Decision and Reasons Promulgated
On 19 June 2015

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

Mr AAKASH SANDEEP HEVANADUGALA PEREIRA
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr C Avery; Home Office Presenting Officer

For the Respondent: Mr K S Sreekumar; Solicitor, Kumar Legal Aid Ltd

DETERMINATION AND REASONS

Introduction

1. The Appellant (the Secretary of State) appealed with permission granted by First-tier Tribunal Judge Chohan on 2 March 2015 against the decision and reasons of First-tier Tribunal Judge Finch who had allowed the Respondent's appeal against the Appellant's decision dated 18 March 2014 to refuse to grant the Respondent leave to remain under paragraph 276ADE of the Immigration Rules and/or under Article 8 ECHR and to remove him from the United Kingdom. The decision and reasons was promulgated on 19 January 2015.

2. The Respondent is a national of Sri Lanka, born there on 23 December 1998. He had entered the United Kingdom as a student, his father's dependant, on 6 August 2006. His immigration history is set out in full at [1] of Judge Finch's decision and reasons. The present appeal was against the Removal Directions dated 18 March 2014 issued under section 10 of the Immigration and Asylum Act 1999, following refusal of the Respondent's application made on 5 November 2013 for leave to remain in his own right on the basis that the Respondent had lived in the United Kingdom for more than seven years.
3. Judge Finch allowed the appeal under the Immigration Rules and made no mention of the claim made under Article 8 ECHR: see [12] of her decision. Exactly what her decision was, it has to be said, is unclear. It seems her intention was to allow that appeal under paragraph 276ADE(1)(iv), resulting in limited leave to remain to the Respondent.
4. Permission to appeal to the Upper Tribunal as sought by the Appellant was granted by Judge Chohan because she considered that it was arguable that the judge had failed to consider whether it would be reasonable to expect the Respondent to leave the United Kingdom, which was part of paragraph 276ADE(1)(iv). The judge had given no reasons as to why it would not be reasonable to expect the Respondent to leave the United Kingdom. The issue had simply not been addressed.
5. Standard directions were made by the Upper Tribunal.

Submissions – error of law

6. Mr Avery for the Secretary of State submitted that this was a clear case of legal error, as the grant of permission to appeal by the First-tier Tribunal indicated. There was no mention of the reasonableness test. The judge had evidently misconstrued the rule and so had missed an essential point. No relevant findings had been made.
7. Mr Sreekumar for the Respondent said that he could not argue with that submission. [12] of the decision and reasons was hard to understand. He was content for the decision and reasons to be set aside and the appeal reheard. He was content to proceed on that basis, and to do so immediately.

The error of law finding

8. At the conclusion of submissions, the tribunal indicated that it found that the judge had fallen into material error of law, for the reasons succinctly indicated in the grant of permission to appeal by the First-tier Tribunal. The decision and reasons would be set aside and the appeal reheard immediately.

The rehearing

9. For clarity the tribunal will now refer to the parties by their designations in the First-tier Tribunal. The Appellant gave evidence in accordance with his witness statements, which were accompanied by copies of his educational certificates and other attainments. In summary the Appellant said that he had come to the United Kingdom with his parents from Sri Lanka when he was 7 years 7 months old. He had studied only 3½ years in Sri Lanka. All his connections were in the United Kingdom, apart from his maternal grandparents who lived in Sri Lanka. He spoke only English. He had returned to Sri Lanka 3 times, with visits of between 2 and 4 weeks. His parents owned no property in Sri Lanka. His education would suffer if he had to return to Sri Lanka, as would his career prospects. He would suffer harm if he were returned, as the schools had a different system. The culture was alien to him.
10. In his oral evidence the Appellant said that he had completed his GCSE examinations and was intending to do "A" levels and attend university. He wanted to study computing. His uncles lived in the United Kingdom
11. Under cross-examination the Appellant insisted that his parents used English at home. His father had come to the United Kingdom to study. They rented a flat.
12. Mr Avery for the Secretary of State submitted that it was reasonable to expect the Appellant to return to Sri Lanka with his parents: see AM (S 117B) Malawi [2015] UKUT 0260 (IAC). The Appellant had no status in the United Kingdom, nor did his parents. There were judicial review proceedings but these were based on the son's position. The Appellant's parents came to the United Kingdom to study and had no expectation of permanent status. Any hardship to the Appellant was the result of the choices his parents had made. There was no evidence from the parents about language but English was widely spoken in Sri Lanka in any event. As it happened, the Appellant was at a natural break in his education and it was a sensible time to leave. He would have the support of his parents. The appeal should be dismissed.
13. Mr Sreekumar for the Appellant submitted that the Appellant had lived longer in the United Kingdom than in Sri Lanka. At 16 he was at a crucial age. His wishes as a young person should be respected. It would be difficult for him to return to Sri Lanka and unfair to expect it. His case should be viewed independently from his parents. The appeal should be allowed.

Discussion and fresh decision

14. There was no significant dispute of fact in this appeal. The Appellant came to the United Kingdom with his parents, for the purpose of his father's studies. That purpose has long been fulfilled and his parents' attempts to remain in the United Kingdom to settle have failed. Neither they nor the Appellant has any right to be in the United Kingdom. The fact that there are judicial review proceedings in progress is simply indicative of the parents' refusal to accept that their hopes of settlement have not been achieved. The Appellant's status

has always been precarious in that neither he nor his parents has ever been lawfully in the United Kingdom on a settlement route.

15. The Appellant retains important links with Sri Lanka, where his education commenced. If the Appellant is to be believed as to his complete lack of knowledge of any of the main Sri Lankan languages (Singhalese and Tamil), then his early education must have been conducted in English, indicating the availability of tuition in English in Sri Lanka. In any event, it cannot be doubted that English is widely spoken by educated people in Sri Lanka and of course is used on official documents. The Appellant has kept in touch with Sri Lanka by means of his three family visits to his maternal grandparents, and also through his paternal uncles who live in the United Kingdom. The tribunal infers that the Appellant will have been in contact with his grandparents between such visits, as he had current knowledge of their health.
16. The Appellant, like his parents, is a member of the Roman Catholic Church. He will be free to continue to practice his faith in Sri Lanka where the Roman Catholic Church has a significant presence. The church is well known for providing assistance to its flock and so will be a further source of support as well as social contact.
17. It is of course understandable that a person of the Appellant's age places great value on his circle of local friends, but he remains his parents' dependant and no doubt it is intended that he should remain so until at least the completion of his education. At the present time the Appellant's parents have no right to work and the family situation is therefore seriously disadvantaged. The parents sold their property in Sri Lanka but own no house in the United Kingdom and are tenants. No reason was given as to why the Appellant's parents cannot rent a house or flat in Sri Lanka, or stay with the Appellant's grandparents on an interim basis.
18. There was no independent evidence of any kind to suggest that the Appellant would suffer any personal harm if returned to Sri Lanka. He has received a free education in the United Kingdom at the expense of the taxpayer, despite his precarious status. The United Kingdom has no obligation to continue the Appellant's education, although he is free to seek entry clearance to return to the United Kingdom as a fee paying student if he wishes.
19. Guidance on the question of reasonableness was provided by the Upper Tribunal in AM (above). As the headnote states at (6): *When the question posed by s117B(6) is the same question posed in relation to children by paragraph 276ADE(1)(iv) it must be posed and answered in the proper context of whether it was reasonable to expect the child to follow its parents to their country of origin; EV (Philippines). It is not however a question that needs to be posed and answered in relation to each child more than once.*
20. The tribunal is unable to find that it is unreasonable to expect the Appellant to return to Sri Lanka. The Appellant was always in the United Kingdom on a

temporary and thus precarious basis. It may be that he disapproves of his parents' choices, but there was no suggestion that his parents are other than loving, competent parents whose hopes have not been achieved. As Mr Avery pointed out, the Appellant has reached a natural break in his education, having completed his GCSEs. It is not the United Kingdom's responsibility to provide for the Appellant's education. Any difference in quality between Sri Lanka and the United Kingdom respective systems is a matter for the government and citizens of Sri Lanka. The Appellant has his parents available for guidance and support.

21. Thus while the Appellant satisfies part of paragraph 276ADE(1)(iv), i.e., being under 18 and having spent more than 7 years in the United Kingdom, the tribunal finds that it is reasonable for him to return to Sri Lanka with his parents.
22. Article 8 ECHR was not the subject of specific submissions at the rehearing but was considered by the Secretary of State. Obviously there will be no interference with the Appellant's family life as he and his parents will be returned to Sri Lanka together.
23. Nasim and Others (Article 8) [2014] UKUT 00025 (IAC) applies to the Appellant's private life in the United Kingdom. The Appellant will be able to remain in contact with his current friends by modern means of communication, although the reality of his stage of life is that he will find paths of friendships diverge as people choose more specialised educational opportunities. There was no factor in the Appellant's private life which the tribunal considers was such as to require the Secretary of State to consider the exercise of her discretion outside the Immigration Rules, as the Appellant can continue his education and practise his religion in Sri Lanka.
24. The fact that the Appellant meets some of the factors listed in section 117B of the Nationality, Immigration and Asylum Act 2002 does not create a right for him to stay in the United Kingdom. They are merely factors which must be taken into consideration, and the tribunal has done so.
25. If that were a mistaken or incomplete view for any reason, the live issue applying the Razgar [2004] UKHL 27 tests is proportionality. The legitimate objective is immigration control, which embraces many related matters. An important aspect of immigration control for the purposes of the present appeal is that the decision as to which non citizens are permitted to settle in the United Kingdom is not a matter of private choice, whether or not there will be any measurable cost or indeed potential economic benefit from such settlement. There has to be a rule, democratically determined, which applies to all. Those rules, already strict, were made far stricter by parliament from 9 July 2012 onwards, a process which continues.

26. In the tribunal's view, the proportionality balance is against the Appellant. He is simply being required to comply with the Immigration Rules which apply to everyone. His removal to his home country cannot be regarded as unreasonable nor will it create consequences which can sensibly be considered as unduly harsh for him.
27. Thus, however the Appellant's appeal is analysed, it must fail.
28. There was no application for an anonymity direction and the tribunal sees no need for one.

DECISION

The making of the previous decision involved the making of an error on a point of law. The tribunal allows the onwards appeal to the Upper Tribunal, sets aside the original decision and remakes the original decision as follows:

The appeal is dismissed

Signed

Dated

Deputy Upper Tribunal Judge Manuell

TO THE RESPONDENT

FEE AWARD

No appeal fee was paid so there can be no fee award

Signed

Dated

Deputy Upper Tribunal Judge Manuell