



IAC-AH-CO-V2

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

Appeal Numbers: IA/27469/2014  
IA/27471/2014  
IA/27475/2014  
IA/27479/2014

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 24<sup>th</sup> June 2015**

**Decision & Reasons Promulgated  
On 24<sup>th</sup> August 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**SP (FIRST APPELLANT)  
NWD (SECOND APPELLANT)  
SP (A MINOR) (THIRD APPELLANT)  
IP (A MINOR) (FOURTH APPELLANT)  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Miss Smith, Counsel

For the Respondent: Mr G Harrison, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellants are citizens of Sri Lanka. The first and second Appellants are husband and wife and the third and fourth Appellants their minor children who were born respectively on 1<sup>st</sup> August 2002 and 8<sup>th</sup> October

2008. The Appellants have a very extensive immigration history. The first Appellant first landed in the United Kingdom on 5<sup>th</sup> September 2006 in possession of a visa conferring leave to enter until 31<sup>st</sup> October 2007. The visa was subsequently extended until 26<sup>th</sup> May 2014. The first Appellant arrived with the second and third Appellants whose visas were subsequently extended in line with his own. The fourth Appellant was born in the UK and thereafter her visa was also extended.

2. On 1<sup>st</sup> April 2014 solicitors instructed by the Appellants applied on their behalf for leave to remain in the UK based on human rights grounds. In Notices of Refusals issued on 10<sup>th</sup> June 2014 the Appellants' applications were refused.
3. The Appellants appealed and the appeals came before Judge of the First-tier Tribunal Davies sitting at Manchester on 9<sup>th</sup> October 2014. In a determination promulgated on 20<sup>th</sup> October 2014 the Appellants' appeals were allowed to the extent that in paragraph 12 of the learned Judge's determination he submitted the appeal back to the Secretary of State for him to consider all the evidence that had been put before him and to reach conclusions as to whether it was reasonable to expect the third Appellant to leave the United Kingdom after considering all that evidence.
4. On 29<sup>th</sup> October 2014 the Appellants appealed that decision.
5. On 3<sup>rd</sup> December 2014 Designated First-tier Tribunal Judge Zucker refused permission to appeal. Further Grounds of Appeal were lodged on 19<sup>th</sup> December 2014.
6. On 27<sup>th</sup> March 2015 Upper Tribunal Judge O'Connor granted permission to appeal. His reasons noted that the First-tier Tribunal had allowed the Appellants' appeal on the basis that the Secretary of State's decision was not in accordance with the law for failure to lawfully consider the application at paragraph 276ADE as to the third Appellant's circumstances. The Grounds of Appeal to the First-tier Tribunal Judge O'Connor noted asserted that the Secretary of State's decision was not in accordance with the Immigration Rules and that it was arguable in light of Section 86(2)(a) of the 2002 Act that the First-tier Tribunal erred in failing to determine such ground.
7. The Secretary of State has somewhat surprisingly lodged two responses to the Grounds of Appeal under Rule 24. The first dated 14<sup>th</sup> May 2015 merely opposes the appeal and submits that the decision to remit the case back to the Secretary of State for reconsideration was one that was open to the judge to make. The latter Rule 24 response dated 12<sup>th</sup> May 2015 is more extensive and contends that the grounds have no merit and merely disagree with the adverse outcome of the appeal. They contend that the judge considered all the evidence that was available to him and came to a conclusion open to him based on that evidence and the Rules, based on the balance of probability and do not disclose any error.

8. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law. The Appellants appear by their instructed Counsel Miss Smith. The Secretary of State appears by her Home Office Presenting Officer Mr Harrison. I am considerably assisted in this appeal by the concession made by Mr Harrison that there is a material error of law in the decision of the First-tier Tribunal Judge in that the First-tier Tribunal Judge has failed to analyse the evidence and make relevant findings of fact.

## **The Law**

9. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
10. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

## **Findings**

11. It is incumbent upon a judge to make findings of fact and unfortunately in this instant case the First-tier Tribunal Judge has failed to do so. I accept that at the appeal the First-tier Tribunal Judge had bundles of all the papers submitted to the Secretary of State as well as having the benefit of oral evidence from the Appellants themselves. Therefore the judge did have all the necessary evidence and the ability to make the decision on the matter at the time. The judge clearly indicates at paragraph 10 of his determination that bearing in mind the decision he proposes to make that it is not necessary for him to set out or analyse the evidence. It is the contention of the judge that the Secretary of State has not in relation to the third Appellant conducted a reasoning process in relation to that Appellant so that he is able to demonstrate that it is not considered

unreasonable to expect the third Appellant to leave the United Kingdom. That finding does not sit comfortably with the Notice of Refusal where at pages 4 and 5 the Secretary of State has set out her reasons why the third Appellant cannot meet the Immigration Rules and has latterly in the Notice of Refusal gone on to consider the position of the family as to whether exceptional circumstances are constituted and concluded the family could return to Sri Lanka as a family unit and continue to enjoy family life together. It seems clear unfortunately that the First-tier Tribunal Judge has not given due consideration to the original findings made by the Secretary of State which constituted the subject matter of the appeal before him when in fact they were there and available for him to consider.

12. In such circumstances I find that there is a material error of law and it is agreed by both legal representatives that the correct approach is to remit the matter back to the First-tier Tribunal to be heard by any other judge than Judge M Davies.

### **Decision and Directions**

The decision of the First-tier Tribunal contains a material error of law and is set aside. Directions are set out below for the future conduct of this appeal.

- (1) The appeal is remitted to the First-tier Tribunal sitting at Manchester to be heard by any First-tier Tribunal Judge other than Immigration Judge M Davies.
- (2) That to the extent that there have been any findings of fact (which there are not) none are to stand.
- (3) That the appeal be heard on the first available date 28 days hence with an ELH of two hours.
- (4) Leave to either party to lodge an up-to-date bundle of evidence at least seven days prehearing.
- (5) No interpreter is required.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

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

No fee award.

Signed

Date

Deputy Upper Tribunal Judge D N Harris