

**Upper Tribunal
(Immigration and Asylum
Chamber)**
IA/39675/2014



Appeal Number:

THE IMMIGRATION ACTS

**Heard at Bradford
On 20th May 2015**

**Determination
Promulgated
On 5th June 2015**

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS IRANGANIE RATHNAHALU GEDERA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr M Diwnycz, Home Office Presenting Officer
For the Respondent: Mr T Hussain, of Counsel

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Secretary of State with permission, against the determination of a First-tier Tribunal (Judge Cox) in which it allowed the Respondent's appeal against the Secretary of State's decision to refuse to vary her leave to remain. The Appellant had applied for leave as the dependent spouse of a Work Permit Holder who has now been granted indefinite leave to remain in the UK.
2. For the sake of continuity I shall refer in this decision to the Secretary of State as "the Respondent" and Mrs Gedera as "the Appellant", which reflects their respective positions before the FtT.

3. The Secretary of State's grounds argue that the FtT failed to give adequate reasons for its findings on material matters. It is submitted that the Tribunal erred in its approach to Article 8 ECHR by failing to take into account Appendix FM when allowing the appeal outside the Rules under Article 8.

Background

4. The Appellant entered the UK with leave as the dependent of a Work Permit Holder – valid until February 2014. Her husband entered at the same time in order to work as a chef for the Aagrah chain of restaurants.
5. On 4th February 2014 both the Appellant and her husband applied for settlement. Her husband was granted indefinite leave to remain but the Appellant's application was refused and a decision was made to remove her under Section 47 of the Immigration Asylum Nationality Act 2006.
6. There was one reason why the Appellant's application was refused: the Respondent considered Section 196D of the Immigration Rules and found she was not satisfied that the Appellant had demonstrated sufficient knowledge of the English language and sufficient knowledge about life in the UK, in accordance with Appendix KOLL.
7. When the appeal against that refusal came before the FtT, it was accepted by the Appellant's representative that she could not meet the requirements of the Immigration Rules. The Judge properly dismissed the appeal under the Immigration Rules and rightly went on to consider whether the Appellant's Article 8 rights were infringed.
8. The grounds point out that the Judge failed, to take into consideration Appendix FM when carrying out that assessment and thus fell into error.

Error of Law

9. I am satisfied that the decision of the FtT needs to be set aside for legal error. Despite Mr Hussain's attempt to persuade me otherwise, it is clear on a full reading of the determination, the Judge has not focussed on whether there is evidence identifying any compelling or exceptional circumstances not covered by the Rules, such as to allow the Appellant being granted leave outside the Rules. Instead he has focussed to a great extent on what might be the detrimental effect on the business which employs the Appellant's husband should he have to return to Sri Lanka with the Appellant. This has led the Judge to overlook the relevant issues of what difficulties it is said the Appellant would face should she return to Sri Lanka. What has to be shown is that those difficulties are such that they would merit a grant of leave outside the Rules and that it would be disproportionate to return the Appellant to Sri Lanka. Mr Hussain did argue that the Judge had considered the Appellant's exceptional circumstances in detail at paragraphs [34] to [38]. I disagree with Mr Hussain's analysis.

10. In the circumstances I consider it the appropriate course is for the decision to be set aside and remitted to the FtT. I did consider whether there might any merit in returning the matter to Judge Cox. This was urged upon me by Mr Hussain on the basis that the Judge's decision was capable of remedy simply by asking him to revisit his decision taking into account Appendix FM. However in my judgment a fresh rehearing is the appropriate course with no findings of fact being preserved.

Decision

11. For the foregoing reasons the decision of the FtT is set aside for legal error. The matter is remitted to the FtT (not Judge Cox) for a full rehearing.

No anonymity direction is made.

Signature C E Roberts
June 2015
Judge of the Upper Tribunal

Dated 4