



IAC-FH-CK-V1

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

Appeal Number: OA/04422/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22 September 2015**

**Decision & Reasons Promulgated  
On 12 October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**ENTRY CLEARANCE OFFICER - CHENNAI**

Appellant

**and**

**MAMALASSERIL KURIAN VINCENT  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr. P Duffy, Home Office Presenting Officer

For the Respondent: Not represented

**DECISION AND REASONS**

1. This is an appeal by the Entry Clearance Officer against the decision of First-tier Tribunal Judge Froom whereby he allowed Mr. Vincent's appeal against the Entry Clearance Officer's decision to refuse to grant leave to enter the United Kingdom as the spouse of his sponsor.
2. For the purposes of this decision I shall refer to the Entry Clearance Officer as the Respondent and to Mr. Vincent as the Appellant, reflecting their positions as they were before the First-tier Tribunal.

3. Permission to appeal was granted as it was arguable that the judge's decision that the Appellant's exclusion was not conducive to the public good was perverse and irrational.
4. The Appellant's representatives wrote to the Tribunal indicating that they were not instructed to attend. I considered it was in the interests of justice to proceed with the hearing in accordance with rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008. I heard submissions from Mr. Duffy. I reserved my decision.

### **Submissions**

5. In the grounds the Respondent submitted that the judge had failed to make material findings on the issue that related to the Appellant's suitability to enter the United Kingdom. It was submitted that in the absence of factual findings in respect of suitability issues, the conclusion of the judge that the Appellant's exclusion from the United Kingdom was not conducive to the public good could not be sustained. It was further submitted that in the absence of clear findings on this issue the Respondent could not understand whether the Appellant should be refused on general grounds given the suggestion that false information may have been provided. Further, it was submitted that it was arguable that the judge should have taken into account that not everything the Appellant had said about the incident could be accepted.
6. Mr. Duffy relied on the grounds of appeal. Further he submitted that the refusal under the suitability criteria was a mandatory ground. In order to avoid being refused under this mandatory ground, the Appellant would have to have shown that he was not guilty of the conduct, and the judge did not seem to accept that he was not. He submitted that it was perverse and irrational that the judge should not find that the Appellant's exclusion was not conducive to the public good: the Appellant's character and conduct had to be found not to be what it was in order to avoid mandatory refusal.

### **Error of law**

7. I have carefully considered the decision. I find that it involves no error on a point of law.
8. The judge states in paragraph [22]:

“Notwithstanding the fact I not accept everything the Appellant says about this incident, I do not regard his continued exclusion from the UK as being shown to be conducive to the public good. It is an isolated incident and the prosecution was not pursued, albeit for reasons of pragmatism. There is no evidence at all to suggest the appellant has ever been involved in any other nefarious conduct or that he maintains associations which give rise to concern. He has no convictions. The Thai authorities have had no concerns about him. I accept Mr Singer's point that I can give weight to the sponsor's judgement that the appellant is a suitable stepfather for her children and husband for herself. The refusal on conducive grounds is not justified.”

9. I find that the judge has given clear reasons for why he does not consider the Appellant's exclusion from the United Kingdom as being shown to be conducive to the public good. He is clearly aware that the Appellant attempted to enter the United Kingdom carrying DVDs containing child pornography: he states "the uncontested evidence was that the Appellant attempted to enter the UK in 2007 carrying DVDs containing child pornography" [18]. It is clear that he is aware of what happened in 2007, hence he stated that he was cautious about accepting the claim that the Appellant had no idea that the material was not "ordinary porn" [21]. However, as he states in [22], the prosecution was not pursued. It was an isolated incident. The judge finds that there is no evidence that the Appellant has been involved in anything like this since 2007, or that he "maintains associations which give rise to concern" [22].
10. The judge took into account all of the evidence before him. He gave weight to the evidence of the sponsor, which he was entitled to do. He noted that she was a person with valuable life experience. He regarded her as a witness of truth and "more importantly, a person who was not likely to embark on a second marriage without giving careful consideration to the character of the man who would be joining her household" [19].
11. The judge also took into account the evidence from The Royal Thai Police Special Branch, and the Kozhikode Regional Passport Office confirming that there was no information held suggesting the Appellant was not a man of good character [20].
12. Refusal under the suitability requirements is mandatory, but only if any of paragraphs S-EC.1.2 to 1.8 apply. The relevant paragraph in the Appellant's case was paragraph S-EC.1.5. The judge found, and gave reasons for his finding, that this paragraph did not apply to the Appellant. Therefore, refusal was not mandatory. This conclusion was open to him having taken into account all of the evidence.
13. I am mindful of the case of Mukarkar [2006] EWCA Civ 1045, in particular paragraph 40.

"Factual judgments of this kind are often not easy, but they are not made easier or better by excessive legal or linguistic analysis. It is of the nature of such judgments that different tribunals, without illegality or irrationality, may reach different conclusions on the same case [...]. The mere fact that one tribunal has reached what may seem an unusually generous view of the facts of a particular case does not mean that it has made an error of law, so as to justify an appeal under the old system, or an order for reconsideration under the new. Nor does it create any precedent, so as to limit the Secretary of State's right to argue for a more restrictive approach on a similar case in the future. However, on the facts of the particular case, the decision of the specialist tribunal should be respected."
14. I find that the decision is not perverse or irrational. The judge considered all of the evidence before him, and gave reasons for his findings. The fact that another judge might have made a different decision does not amount to an error of law.

**Notice of Decision**

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

I do not set aside the decision of the First-tier Tribunal.

No anonymity direction is made.

Signed

Date 9 October 2015

Deputy Upper Tribunal Judge Chamberlain