



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/10009/2015
& IA/10015/2015

THE IMMIGRATION ACTS

Heard at Field House
On 22 January 2016

Decision & Reasons Promulgated
On 25 January 2016

Before

Deputy Upper Tribunal Judge Pickup

Between

**Sampath Lucky Weerasinghe Weerasinghe Arachchig
Nirosha Tharangani Rodrigo Ariyawansa Hettige**
[No anonymity direction made]

Appellants

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellants: Mr C Talacchi, instructed by Solidum Solicitors
For the respondent: Mr S Staunton, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants appeal against the decision of First-tier Tribunal Judge Pacey promulgated 3.8.15, dismissing their appeals against the decisions of the Secretary of State, dated 24.2.15, to refuse their applications for leave to remain in the UK on human rights grounds and to remove them from the UK pursuant to section 47 of the Immigration Asylum and Nationality Act 2006. The Judge heard the appeal on 23.7.15.

2. First-tier Tribunal Judge Molloy granted permission to appeal on 4.12.15.
3. Thus the matter came before me on 22.1.16 as an appeal in the Upper Tribunal.

Error of Law

4. For the reasons set out below I find no material error of law in the making of the decision of the First-tier Tribunal such as to require the decision of Judge Pacey to be set aside.
5. The grounds of appeal are rather confused and difficult to follow. I also found Mr Talacchi's submissions rather difficult to follow as they did not seem to relate directly to the issues in the appeal. In particular, I fail to understand in what way it is submitted that the First-tier Tribunal Judge made "unreasonable credibility findings." In granting permission on a different ground, Judge Molloy refused permission to appeal on this ground and it need not be taken further.
6. Judge Molloy also refused permission in relation to the ground challenging, on grounds of failure to provide sufficient reasons, the finding at §12 of the decision that the appellants did not meet the requirements of Appendix FM, for the reasons set out in the Secretary of State's refusal decision.
7. The only arguable ground of appeal is in relation to the brevity of the judge's statement at §15 of the decision that there were "no compelling or compassionate circumstances to enable me to consider article 8 outside the Rules." In granting permission Judge Molloy considered it arguable that this was "insufficiently reasoned in that there is no reference to either the Razgar five steps or the section 117 duty." With respect to Judge Molloy, if there are no compelling circumstances to justify consideration of private and family life outside the Rules under article 8 ECHR, there is no purpose in re-stating Razgar or making reference to section 117B of the 2002, which, as section 117A makes clear only applies when article 8 is to be considered.
8. It is perhaps important to understand the background and recall the nature of the application made to the Secretary of State on 30.12.14.
9. The first appellant came to the UK as a student in 2008. His wife joined him as a student dependent in 2010. Their leave was subsequently extended as student and dependent to 1.1.15. On 30.12.14 and thus within extant leave, they applied for leave to remain on the basis of private and family life. The application form makes it clear that the first appellant wanted to carry on studying in the UK. However, he did not make an application for leave to remain as a student. Indeed, he was unable to do so for the reasons set out in his grounds of appeal, that the Rules do not permit him to apply for further study at the same level as his previous qualifications and study. His last sponsor's licence was revoked and he claimed that he needed more time to "finalize my qualification." In evidence to the First-tier Tribunal he said that he was not currently studying as he had completed an online Masters degree with Anglia Ruskin University the previous month and now wanted to do a MBA.

10. Thus there was no student application. Neither did he raise any suggestion that he had not had time to obtain a new educational sponsor, an argument that Mr Talacchi appeared to raise, suggesting that the decision of the Secretary of State was unfair. He also sought to rely on the case of Abbasi and another (visits - bereavement - Article 8) [2015] UKUT 463, suggesting that this case was akin to that as the first appellant was seeking leave for a specific purpose. I reject that argument as plainly nonsense. The only application made and considered on form FLR(O) was for leave to remain on the basis of private and family life. Whilst the first appellant wished to continue studying, he knew that he could not meet the requirements of the Rules for leave to remain as a student, whether or not he obtained educational sponsorship. The reasons he gave in his grounds of appeal had been fulfilled and at the First-tier Tribunal he was clearly seeking to embark on further study. Knowing he could not meet the Rules he made the only application he could, for leave to remain on the basis of private and family life.
11. That application was properly considered and refused for very clear reasons. The appellants could not meet the requirements of Appendix FM in relation to family life and there were no very significant obstacles to integration on return to Sri Lanka, as the first appellant accepted at the First-tier Tribunal appeal hearing. At §13 Judge Pacey found that it was only for reasons of convenience that they did not wish to return to Sri Lanka, but they were perfectly able to do so and indeed he declared that was his intention, once he had completed studies in the UK.
12. In essence, the appellants were seeking to remain as students through an alternative route of private and family life. There was nothing compelling, compassionate or exceptional about their circumstances and thus at §15 Judge Pacey said as much, justifying why the judge did need to go on to consider article 8 ECHR outside the Rules. This course of action is now well established as good law by the Court of Appeal in the case of Singh [2015] EWCA Civ 74, where it was held that there is no need to conduct a full separate examination of article 8 outside the Rules where, in the circumstances, of a particular case, all the issues have been addressed in the consideration under the Rules.
13. I find absolutely no error of law in the decision of Judge Pacey. Mr Talacchi was unable to point me to any circumstances of the appellants that could properly be described as compelling. Even if there had been a reasoned article 8 ECHR assessment following the Razgar stepped approach, I fail to see how it could ever be concluded that the decision of the Secretary of State was disproportionate or unjustifiably harsh so as to justify granting leave to remain outside the Rules.

Conclusion & Decision

14. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal of each appellant remains dismissed on all grounds.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order. Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeals have been dismissed.



Signed

Deputy Upper Tribunal Judge Pickup

Dated