



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

Appeal Numbers: IA461582014
IA461592014

THE IMMIGRATION ACTS

Heard at Field House

On 25th May 2016

**Decision & Reasons
Promulgated
On 9th June 2016**

Before

UPPER TRIBUNAL DEPUTY JUDGE ROBERTS

Between

**PRIYANGANI MUDIYANSELAGE (FIRST APPELLANT)
[D S] (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Miss Cooke (Counsel)

For the Respondent: Mr Tufan (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. The Appellants, Mrs P R Mudiyansele and [DS] are mother and daughter born respectively on 20th February 1975 and [] 2005. They are nationals of Sri Lanka.

2. They have been given permission to appeal against the First-tier Tribunal (Judge Grant) which in a decision promulgated on 12th October 2015 dismissed their appeals against the Respondent's decision to refuse to vary their leave to remain as the dependant wife/daughter of Neelum Priyakantha Silva Dahadarage (the sponsor). The sponsor is also a Sri Lankan national presently here in the UK as a Tier 4 Migrant with leave to remain until March 2017. A decision was also made to remove both Appellants under Section 47 of the Immigration, Asylum and Nationality Act 2006.

Background

3. The Appellants arrived in the UK on 6th February 2010 and were granted leave to remain as the dependants of the sponsor who had limited leave to remain as a Tier 4 Migrant. The Appellants' leave to remain expired on 12th August 2014.
4. On 11th August 2014 they applied to vary their leave to remain. Those applications were refused by the Respondent on 30th October 2014 and it is those refusals which forms the basis of these appeals.
5. The Respondent refused the applications because she was not satisfied that either Appellant could meet the requirements of the Immigration Rules. In particular neither could meet the requirements of paragraph 319(C)(i). The reason for this is that it could not be shown that the sponsor was a government sponsored student and was undertaking a course of study with a Sponsor who was either a recognised body or a higher educational institution as required under the current Immigration Rules. It remains the case, that neither Appellant can meet the requirements of the current Immigration Rules.
6. Nevertheless the Appellants appealed the Respondent's decision and their appeals came before the First-tier Tribunal. The First-tier Tribunal heard evidence from the Appellants' sponsor. His evidence amounted to saying that he and his family had entered the United Kingdom together; they were a close family unit and to require the Appellants to leave the United Kingdom whilst he remained here to complete his education, would be against their Article 8 ECHR rights. In addition it was said that the second Appellant is now 10 years of age and is in education in the UK. She has been in the UK for a little over six years and therefore it would involve a disproportionate breach of her Article 8 rights in that she would be separated from her father. It would be against her best interests not to allow her to remain with both parents until the whole family could return to Sri Lanka once the sponsor's education was complete.
7. Having heard this evidence, the FtT concluded that it was correct that neither Appellant could meet the requirements of the Immigration Rules. The judge set out that the appeals appeared to be based on Article 8 ECHR grounds only by saying that the family had never been separated, they are a close family unit. The judge set out that there was a claim that there

would be no accommodation for the Appellants should they return to Sri Lanka the sponsor. Further, it was said, the sponsor could only pursue his course of studies in the UK.

8. The FtT rejected much of the Sponsor's evidence. Clear reasons were given why that evidence rejected. In essence the FtT considered that there was nothing exceptional or compelling in terms of Article 8 ECHR which enabled it to allow the Appellants' appeals. The appeals were accordingly dismissed.

Permission to Appeal

9. Both Appellants sought permission to appeal the FtT's decision. The grounds seeking permission amount to this.

- The FTT had materially erred by entering into speculation as to how the Appellants' Sponsor obtained his visas for studies up to 2017. It thereby wrongly found the Sponsor not credible.
- It failed to properly consider the Appellants' Article 8 ECHR claims outside the Immigration Rules.
- Allied with the point above, it failed to give proper consideration to the Section 55 best interests of the second Appellant, who is of course a minor and who is currently in education in the UK.

10. Permission to appeal was granted in the following terms only:

- "1. It is arguable that the Judge has set out an insufficient analysis of the relevant factors in considering the best interests of the child in respect of the second Appellant. It is arguable that the Judge has not set out a sufficient analysis of the weight to be attached to the relevant factors in this context.
2. It is further arguable that the Judge has not set forward a sufficient analysis of the relevant factors appertaining to exceptionality or the existence of compelling circumstances in deciding whether or not to proceed to consider whether there would be a breach of Article 8."

Thus the matter comes before me to decide whether the decision of the First-tier Tribunal involves the making of an error of law such that it must be set aside and the decision remade.

Error of Law Hearing

11. I heard submissions from both representatives. Miss Cooke's submissions were helpfully contained in a skeleton argument and in summary she makes the following points.

- The FTT failed to set out and properly analyse the relevant factors and considering the best interests of the second Appellant.
 - Inadequate consideration was given to the effect of separation of the child from her father.
 - No consideration was given to the child's wishes.
 - There was insufficient analysis of the relevant factors appertaining to exceptionality/compelling circumstances in deciding whether or not to proceed to consider whether there could be a breach of the Appellants' Article 8 ECHR rights.
12. Mr Tufan strongly defended the decision. He submitted that on any version of events, the factors put forward by the Appellants could hardly amount to compelling/exceptional circumstances such as to entitle them to a freestanding Article 8 consideration.
13. The second Appellant who was 10 or 11 years of age would be removed with her mother to Sri Lanka. Her father could either go with them or remain in the United Kingdom until March 2017 thereabouts when his visa expired. There was nothing exceptional in either Appellant's case. The second Appellant was in education in the UK but of course had no right to remain here. Her father, it was claimed, would finish his course in less than a year and would return to Sri Lanka then any way. There was family in Sri Lanka and nothing had been forthcoming other than to say the family would be separated for a short time. That could hardly amount to compelling or exceptional circumstances.

Error of Law Consideration

14. It is contended on behalf of the Appellants that their circumstances at the date of the FTT's decision were sufficiently exceptional and compelling that it was open to that Tribunal to exercise discretion and allow the appeals on Article 8 ECHR grounds.
15. What then are the compelling circumstances put forward? The evidence amounts to this - the family are a close family - the Respondent's decision will separate the family for a short time only since the sponsor says he is to return to Sri Lanka in March 2017 when his course finishes. The second Appellant is currently receiving education in the UK. She is now 10 or 11 years of age and has been here six years. She will be removed with her mother. There are other family members living in Sri Lanka.
16. In my judgment the Appellants' cases fall far short of that required to establish compelling circumstances not covered by the Immigration Rules. They are far short of ones which would satisfy an Article 8 ECHR claim. Regarding the fact that the family would be separated, any separation

would be temporary in any event. The sponsor's own evidence states that he will leave the UK in March 2017 when his current course finishes and his visa expires. Both Appellants were granted visas for temporary purposes only; they cannot have entertained any expectation that they would be allowed to remain in the United Kingdom indefinitely, nor any expectation that they would be allowed to remain once their current leave had expired.

17. Whilst it is the case that the second Appellant attends school here, there was nothing of substance put before the FtT which could have led it to the conclusion that she is entitled to receive her education here in the UK. Indeed despite what was asserted in the grounds, the FtT specifically dealt with that point at [15].
18. The second Appellant will return to Sri Lanka with her mother. Her father will join her, in March 2017; a separation of only a few months.
19. It is correct that the judge may have dwelt unnecessarily on the sponsor's own immigration status but that does not amount to an error which casts doubt upon the rest of the decision.
20. It is clear on a full reading of the judge's decision, that she kept in mind all the relevant factors which had been placed before her, including the best interests of the minor Appellant.
21. I find therefore, that there is nothing to consider by way of a wider Article 8 assessment and can find no evidence of any compelling circumstances justifying a grant of leave outside the Rules.
22. I find therefore, for the foregoing reasons that the decision of the First-tier Tribunal contains no material error requiring it to be set aside. The decision is sustainable and stands.

Notice of Decision

The appeals of the Appellants are dismissed. The decision of the First-tier Tribunal stands.

No anonymity direction is made.

Signed

C E Roberts

Date

08 June 2016

Upper Tribunal Deputy Judge Roberts