



IAC-FH-NL-VI

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

Appeal Numbers: HU/06045/2015
HU/06046/2015

THE IMMIGRATION ACTS

Heard at Field House
On 28 June 2017
Prepared 28 June 2017

Decision & Reasons Promulgated
On 28 July 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MR EBERT ENDERAGE DON
MRS RUPA JAYANTHI WICKRAMARACHCHI
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr D Shvestha, Counsel instructed by Jein Solicitors
For the Respondent: Mr E Tufan, Senior Presenting Officer

DECISION AND REASONS

1. The Appellants, nationals of Sri Lanka, dates of birth respectively 8 February 1938 and 2 August 1950 appealed against the Respondent's decisions, dated 8 September

2015, to refuse leave to remain. Their appeals were dismissed by First-tier Tribunal Judge Dhaliwal (the Judge) on 2 November 2016.

2. On 22 May 2017 I decided that the Original Tribunal's decision on Article 8 ECHR issues did not stand and the matter would have to be remade in the Upper Tribunal at a resumed hearing before me. Further evidence, if called, was to be served in advance and an interpreter was arranged.
3. The position is that there has been no material, new information forthcoming in support of this matter.
4. The Appellants' case is essentially that they came to the United Kingdom as visitors. They overstayed but stayed on not least because their daughter [MP], the Sponsor, (date of birth 17 April 1976) had given birth to a further child and by 2008 they sought to remain essentially as carers for the children of their daughter and son-in-law, [HP]. There are three children, [OP] (d.o.b. 2007), [HaP] (d.o.b. 2006) and [YP] (d.o.b. 2010). It is clear that the Appellants have played an active part in the upbringing of the three children and a part in setting a cultural background for the children. The Sponsor, her husband and all three children are British nationals. The children are in full-time education in the UK.
5. The Appellants, as grandparents, have been active in their grandchildren's social life and development. They have another daughter with whom they are not in contact and they have no particular connection with her and her family who are all in Australia. They both say that they are very dependent on the Sponsor: She is the only source of income and provides emotional strength and assistance as well as a roof over the head of the Appellants. The Second Appellant in her statement confirmed the relationships to which I have referred and the part she and the first Appellant had played in the lives of their grandchildren, the Sponsor and the contribution that they make to the development of the children.

6. The Second Appellant described herself as very dependent upon the Sponsor, and on the emotional support and strength the latter provides. The Appellants look with foreboding at a return to Sri Lanka and evidently are concerned about the extent to which they could continue to be supportive, as they have become used to doing, or would not be supported by the Sponsor) or her husband but Mr Shvestha sought to argue that that might be the case. It is clear that that was not an issue which the judge was invited to determine.
7. The Appellants' daughter sets out in her statement the background to this matter, the employment of herself and her husband and that they all live together at a house in Luton. [MP] owns a second property, again a house in Luton, which generates a monthly income. In addition, her husband has his remuneration as a storeman whilst she is a teaching assistant. It seems self evident that they are a hard-working family.
8. I understand that the Sponsor was saddened by the refusal by the judge and felt that the right result was that they be allowed to remain and that the grandparents, that is the Appellants, had a major part still to play in the upbringing of her children.
9. The Appellants' bundle contains familiar information concerning employment and the Appellants' circumstances as well as photographs of the family at various events.
10. In considering this matter it is clear to me that the duty imposed by Section 55 BCIA 2009 requires that a proper and careful assessment be made of all relevant information available.
11. In assessing this matter I look to see what if anything it is said that the children's best interests are adversely as well as positively affected by the involvement of the Appellants in their lives.

12. In this case it is clear that the grandparents form an essential part of a loving bond within the family and to an extent diffuse the impact on their mother and father by their daily involvement. It is clear that them removing to Sri Lanka will affect the children and affect them adversely. There is no educational psychologist's report but I am provided with a letter from Dr Waidyaratne, an Associate Specialist in Psychiatry. His letter does not set out his medical qualifications or the nature of his employment or practice in psychiatry.

13. There is no information given to me as to why a proper report has not been obtained if there are concerns that the children's education and emotional advancement being significantly adversely affected by the Appellants' removal. The doctor said this:

“[MP] has informed me of the immigration appeal and I write this letter as a family friend.

I have known the family for over 10 years and I met them at the Buddhist temple based in Letchworth. I have great regard for Mr Enderage Don and Mrs Jayanthi Wickramarachchi and their family who they reside with. I see Mr Enderage Don, Mrs Jayanthi Wickramarachchi and the [P] family at least once a week. It is very clear to me that they are a very close bonded family which is evident by their interaction with each other. The children, [RP], [OP] and [YP] are very close with their grandparents which is nice to see. I have seen them go to the grandparents for parental advice and assistance and to me Mr Enderage Don and Mrs Jayanthi Wickramarachchi are like second parents to them. If they were to be returned to Sri Lanka there would be a detrimental effect on [RP], [OP] and [YP] as it would impact on their emotional wellbeing. Furthermore, the children's education will be negatively affected and it will be a stressful experience for them to adjust to such a permanent separation from their grandparents due to high level of interaction they have with them.

If the Court requires any further information from me, I am more than happy to assist and I can be contacted on the above details.”

14. In addition he opined that the children’s education would be negatively affected and it would be a stressful experience for them to adjust to such a permanent separation from their grandparents due to the high level of interaction they have with them. Dr Waidyaratne indicates his willingness to make further contact, if sought.
15. I find the likelihood is that the children would be adversely affected and upset, at least in the short term, and there is nothing to really guide me as to the extent of any permanent or long-term damage likely to be caused or to what extent that would be mitigated either within the home or within the school or elsewhere.
16. Given the ages of the children I have no particular information from them concerning the impact on them as they judge it. Nevertheless it seems to me that a measure of commonsense should be applied and that it is likely that it would be an upset for the three children. Plainly there may be financial limitations on either the costs or number of children who would go on one trip or when it could occur or the frequency to go back and visit the Appellants in Sri Lanka. Mr Shvestha makes the point that the poor immigration history of the Appellants should not be held against the minor grandchildren and there is a positive contribution made by the grandparents to enable the Sponsor and he4r husband to work and support the wider family unit.
17. It is clear that the Appellants status in the UK has been precarious both in terms of the issues arising under Section 117B NIAA 2002 and in terms of the effects on family and private life rights.
18. I consider that the maintenance of immigration control is, in this case, a material consideration which, as part of the public interest, should be given significant weight. It is clear that there is no likelihood of either of the Appellants being in work

or needing to use English in order to assimilate into life in the United Kingdom or find employment. Although there was reference to delay by the Secretary of State the position is that it was only in 2015 that the present application to remain was made. The fact is that delay has not been caused by the Respondent's conduct in processing the relevant application and the fact that an earlier application, one the year previously, had been made but which was not capable of being subject to appeal does not materially change the point.

19. I therefore do not find that delay is a material factor which should be given weight. I take into account that telephone is likely to be the principal means by which the grandparents communicate with the children if they return to Sri Lanka. I see no reason why Skype or WhatsApp cannot be used and would not effectively be available.
20. In these circumstances this may appear to be a hard decision but it seems to me that there are not particular circumstances to militate in favour of them remaining bearing, as I do, fully in mind their age and the length of time they have been in the United Kingdom. I do not find the Appellants have shown there are compelling or exceptional circumstances for looking at the Appellants claims outside of the immigration rules. I do not accept that the Appellants fell within Appendix FM or paragraph 276ADE of the Immigration Rules. For my own part the Respondent's reasons, which I have taken into account, are persuasive.
21. I have considered Section 117B NIAA 2002 and find that weight but not great weight can be given to the private and the family life established by the Appellants in the United Kingdom when their immigration status was precarious. I take into account and give weight to the benefits to the children of the subsisting relationship with the Appellants and the reasonable expectations of their continued involvement in the children's upbringing. On the evidence before me and on balance, in my judgment, the impact of their removal is not so significant as to outweigh the public interest in removal.

22. Unfortunately these hard decisions are partly a product of the case law, which has so clearly clarified the relationship between Article 8 ECHR and personal circumstances, but more importantly has progressively made it hard and harder to succeed under the Immigration Rules or Article 8 ECHR.
23. Mr Shvestha argued for an assessment of the impact on the Appellants but I regret to say that the evidence that has been advanced is very thin, un-particularised. It is difficult to see why those matters have been ignored or seemingly not addressed in the evidence. A particular factor which strikes me as significant is the ages of the first Appellant and his wife and the effect upon them, at their ages of moving away from the supportive family whose company they have enjoyed for many years.
24. In the circumstances I do find that the removal of the Appellants to Sri Lanka is in accordance with the law and is proportionate. The best interests of the children, if they were solely determinative of this matter, would undoubtedly lead to the conclusion that the grandparents should remain. However, whilst Mr Shvestha referred to the interests of the children being paramount, he accepted that in fact they are a primary consideration and not that they were determinative of the issues. In certain circumstances it may be the children's interests would have been heightened by the evidence but I do not speculate.
25. In the circumstances in really making this decision I conclude that the Original Tribunal made an error of law and the decisions can not stand. The following decisions are substituted:

NOTICE OF DECISION

The appeals are dismissed.

ANONYMITY

No anonymity order was requested nor was one required.

FEE AWARD

A fee of £140 for each Appellant was paid. The appeals have failed and in the circumstances I find that no fee awards are appropriate.

Signed

Date 26 July 2017

Deputy Upper Tribunal Judge Davey

P.S. These decisions have been delayed through the files being miss- placed