



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

Appeal Number: HU/17235/2016

THE IMMIGRATION ACTS

Heard at Field House

On 13 April 2018

**Decision & Reasons
Promulgated
On 23 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**MRS THEVAMPIGAI ARIYARATNAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Harris, Counsel instructed by Nag Law Solicitors

For the Respondent: Ms Z Ahmad, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Eldridge promulgated on 25 October 2017. The appellant sought entry clearance in order to settle in this country as a dependant of her son who came here has refugee status in the United Kingdom.
2. The judge in a fully reasoned decision considered the claim under the Immigration Rules and dismissed it on the basis of the evidence that was before him, in particular evidence concerning the care that may have been available to the appellant in Sri Lanka.

3. What the judge did not deal with was what might be called the 'stand alone' Article 8 consideration having regard to family life. In paragraph 25, he wrongly imposed a gateway consideration of "compelling reason". It is argued on behalf of the Secretary of State that although the decision is silent on the matter, the Upper Tribunal can safely assume that it was within the judge's contemplation and formed part of his decision-making process.
4. A judge is not required to deal with each and every separate item of evidence and argument but a judge is required to address all issues which are in play and to resolve them expressly and not by their implication. The grant of permission to appeal in this matter identified the most attractive of the various grounds pursued, as there being no separate consideration of family life.
5. It is well-established by decisions such as **Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31** that particular care and scrutiny must be given by a court when considering family life as between two adults. The requirement is for a judge to consider whether the basis of the relationship is of such a degree as to engage the family life considerations of Article 8 and then if it does to carry out a proportionality exercise in that regard. Neither was done in this case.
6. It follows that the decision must be set aside and the matter remitted for a rehearing.
7. It may well be that the rehearing reaches the same result, and the appellant and her family should not get their hopes up. The recent decision of the Court of Appeal in **Entry Clearance Officer, Sierra Leone v Kopoi [2017] EWCA Civ 1511** emphasises the narrowness of Article 8. However, justice requires that the decision is made afresh adopting the proper, and more nuanced, approach.

Notice of Decision

- (1) The decision of the First-tier Tribunal is set aside.
- (2) The matter is remitted to Hatton Cross for a fresh hearing by a judge other than First-tier Tribunal Judge Eldridge
- (3) No findings of fact are preserved.
- (4) No anonymity direction is made.

Signed *Mark Hill*

Date

20 April 2018

Deputy Upper Tribunal Judge Hill QC