



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/00055/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 11 September 2018

Decision & Reasons Promulgated  
On 21 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

MRS SENANI NERANJALI KUMARI PALLE GEDARA  
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr F Junior, Legal Representative instructed by Lawland Solicitors  
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Sri Lanka who appealed against the Respondent's decision dated 28<sup>th</sup> April 2014 to refuse her application for leave to enter the United Kingdom as a partner under Appendix FM of the Immigration Rules. Her appeal was heard by First-tier Tribunal Judge O'Keeffe who dismissed the appeal under the Immigration Rules and on human rights grounds in a decision promulgated on 17<sup>th</sup> July 2017.
2. The judge noted (paragraph 22) that in order to meet the requirements of Appendix FM for leave to enter here as a partner the Appellant must provide evidence as

specified in Appendix FM-SE. The burden of proof was on the Appellant. On the evidence before her the judge found that the Appellant had not provided the specified evidence in relation to the financial requirements and the English language requirements. She went on to consider whether there were compelling circumstances not envisaged in the Immigration Rules in order to justify a grant of leave to remain outside the Rules and with reference to **Razgar [2004] UKHL 27** concluded that there were no such grounds and hence she dismissed the appeal.

3. Grounds of application were lodged. It was said that the Sponsor gave plausible explanations for any inconsistencies in his bank statements from the transactions and the judge had failed to give weight to this evidence. The judge had further erred in saying that the further documents required by Appendix O were not provided in evidence; this showed that the judge had completely ignored the evidence that was contained in the Appellant's bundle from pages 16 to 20. In terms of Article 8 it was said that the judge had failed to acknowledge that the application was made four years previously in May 2013 and the delay must have affected the Article 8 rights that the Appellant and Sponsor enjoyed.
4. Permission to appeal was refused by First-tier Tribunal Judge Pickup in a decision dated 19<sup>th</sup> January 2018, it being said that all findings were open to the judge for which cogent reasons were provided. The grounds were renewed to the Upper Tribunal and Upper Tribunal Judge Bruce concluded that if the error in law was made out it would be material to the outcome of the appeal and therefore permission was granted.
5. Thus, the matter came before me on the above date.
6. Before me Mr Junior accepted that the bank statements etc. did not comply with the specified evidence required and he also accepted that the material required to be lodged with the application. His argument focused on the best interests of the child. This required a more detailed assessment than the judge had given it. The best interests of the child required to be looked after by both parents and not just the Appellant in Sri Lanka.
7. For the Home Office Ms Everett said there was no error in law in the judge's reasoning. She had made clear why the Appellant did not satisfy the requirement of Appendix FM under the specified evidence rule. She had considered Article 8 as at the date of decision. The decision should stand.

### **Conclusions**

8. Appendix FM-SE in relation to family members and specified evidence is quite clear under "D" (a) that in deciding an application the Entry Clearance Officer or Secretary of State will consider documents that have been submitted with the application and will only consider documents submitted after the application where sub-paragraphs (b) or (e) or (f) applies. It could not be argued, and was not, that any of the exceptions apply. It is not disputed here that the documents which it is said the judge should have considered were lodged post the application and are therefore not documents which the judge could consider under the immigration rules.

9. Mr Junior acknowledged this and his argument was confined to the fact that there was an error by the judge in relation to the judge considering the best interests of the child. However, the judge took into account the best interests of the child as a primary consideration in her decision (paragraph 11) referring to **ZH (Tanzania) v SSHD [2011] UKSC 4**. The judge noted that the child was born in Sri Lanka and had lived there with the Appellant from birth. The child had been brought up by his mother and she was not told of any health or wellbeing concerns with his current living arrangements. He was still a relatively young child who was some way off compulsory school age. The judge had no hesitation in concluding the child's best interests are met by him continuing to remain with his mother wherever she might be.
10. That reasoning is clear and cogent. The judge further noted (paragraph 27) that there was nothing to suggest that the child's welfare would be harmed if he continued to live with the Appellant in Sri Lanka. The judge went on to conclude that the decision to refuse the Appellant entry clearance was proportionate to the legitimate public aim for firm and fair immigration control. In balancing the private interest of the Appellant against the public interest she found the decision to refuse entry clearance was a proportionate measure and a fair balance between the competing interests.
11. There is no error of law in the reasoning of the judge. The conclusions that the judge came to are entirely reasonable and proportionate. As such it follows that the decision must stand.

**Notice of Decision**

12. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
13. I do not set aside the decision.
14. No anonymity order is made.

Signed *JG Macdonald*

Date 19<sup>th</sup> September 2018

Deputy Upper Tribunal Judge J G Macdonald

**TO THE RESPONDENT**  
**FEE AWARD**

The appeal is dismissed and therefore there can be no fee award.

Signed *JG Macdonald*

Date 19<sup>th</sup> September 2018

Deputy Upper Tribunal Judge J G Macdonald