



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003487
UI-2024-003489
First-tier Tribunal No: HU/62156/2023
HU/62157/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
15 October 2024

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

SATHIARANEE BALASUBRAMANIAM
BALASUBRAMANIAM PONNIAH APPAKUDDY
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms C Besso, counsel instructed by MTC Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

Heard at Field House on 11 October 2024

DECISION AND REASONS

Introduction

1. The appellants have been granted permission to appeal the decision of First-tier Tribunal Judge Abebrese who dismissed their appeals following a hearing which took place on 4 June 2024.
2. Permission to appeal was granted by First-tier Tribunal Judge RA Pickering on 27 July 2024.

Anonymity

3. No anonymity direction was made previously. No application has been made for anonymity and there is no obvious reason for one now.

Factual Background

4. The appellants are nationals of Sri Lanka aged in their late seventies who last entered the United Kingdom with leave to enter as visitors and sought leave to remain on the basis of their family life with their children and grandchildren. In particular, the appellants wish to maintain their close relationship with the minor son of their late daughter who passed away when their grandchild was nine months old.
5. Those applications were refused by the Secretary of State by way of decisions dated 1 October 2023. In brief, the respondent noted that the appellants were unable to meet the requirements of the Immigration Rules based on their private and family lives. It was further considered that the appellants' circumstances were not sufficiently compelling or compassionate to merit a grant of leave to remain outside the Rules.

The decision of the First-tier Tribunal

6. It suffices to state that the First-tier Tribunal judge rejected the argument as to family life between the appellants, their children and grandchildren and found the decisions refusing leave to remain to be proportionate.

The appeal to the Upper Tribunal

7. The grounds of appeal upon which permission was granted are twofold. Firstly it is argued that the judge failed to make relevant findings and take into account an expert independent social work report which provided evidence of greater than normal emotional ties between the family members. Secondly, the judge failed to take into account or make a finding on the submission that the facts of the appellants' cases could be distinguished from those of the claimant in *Mobeen* [2021] EWCA Civ 886.
8. Permission to appeal was granted on the basis sought.
9. The respondent filed no Rule 24 response.

The error of law hearing

10. The matter comes before the Upper Tribunal to determine whether the decision contains an error of law and, if it is so concluded, to either re-make the decision or remit the appeal to the First-tier Tribunal to do so. The hearing was attended by representatives for both parties as above. A bundle was submitted by the appellants' representatives containing, inter alia, the core documents in the appeal, including the appellant's and respondent's bundles before the First-tier Tribunal
11. Mr Walker readily accepted that there was no reference in Judge Abebrese's decision to the opinion of the independent social worker and that the report had been briefly mentioned at [25] of the decision. He stated that the error was material as the effect on the appellants and their grandchild was the main aspect

of the appeal. For her part, Ms Besso clarified that the judge had made no reference at all to the ISW report.

12. At the end of the hearing, I informed the parties that I was satisfied that the decision of the First-tier Tribunal contained a material error of law and that it was set aside.

Discussion

13. It is not in dispute that a detailed independent social work report of Laurence Chester MA Dip/SW, dated 2 April 2023 formed part of the appellants' bundle of evidence before the First-tier Tribunal. That report provided an expert opinion on the consequences of the appellants' removal from the United Kingdom on them as well as on their grandchildren. The overall conclusion of Mr Chester, based on a detailed assessment of the entire family, was as follows.

It is my view that if this application were not successful, Mr and Mrs Balasburamaniam's wellbeing may be compromised to the extent that their essential living needs may not be met. They would not benefit from the family life they currently enjoy and this in itself is likely to cause a significant amount of emotional distress for the whole family. It is my view that, on balance, the refusal of Mr and Mrs Balasburamaniam Application would be extremely harsh on them and their family in this country.

14. Cross-references to this ISW report as well as other evidence can be found in the appellants' skeleton argument which was before the First-tier Tribunal and, according to the unchallenged note of the proceedings annexed to the grounds of appeal, both counsel referred to the report during their submissions.
15. While the judge stated at [23] that he had considered the documentary evidence in the appeal and at [25] refers to the medical evidence adduced, nowhere is there a reference to Mr Chester's report.
16. As rightly conceded by Mr Walker, the judge materially erred in his complete failure to assess or even note the existence of the ISW report which contained highly material evidence, relevant to the proportionality assessment. It follows that the decision of the First-tier Tribunal is unsafe and needs to be set aside with no preserved findings.
17. I invited the views of the representatives on future disposal of these appeals. Ms Besso indicated that there may be a need for an updated ISW as well as other fresh evidence. She was of the view that the matter ought to be remitted as there were no preserved findings of fact. Mr Walker did not disagree. Applying *AEB* [2022] EWCA Civ 1512 and *Begum* (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC), I carefully considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statements. I took into consideration the history of this case, the nature and extent of the findings to be made as well as the fact that the nature of the errors of law in this case meant that the appellants were deprived of a fair hearing. I further consider that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process and therefore remit the appeal to the First-tier Tribunal.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard by any judge except First-tier Tribunal Judge Abebrese.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 October 2024