

**Upper Tribunal
(Immigration and Asylum
Chamber)**
OA/06888/2013



Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House, London

Determination

On 10th June 2014

Promulgated

On 15th July 2014

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

**MR KETHEESHKUMAR RAMAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr V P Lingajothy of Counsel

For the Respondent: Mr G Saunders, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This application for permission to appeal is brought by the above Appellant a citizen of Sri Lanka (date of birth 24.11.1983) against the decision of the First-tier Tribunal (Judge Nicholls) which in a determination promulgated 18th February 2014 dismissed the Appellant's appeal against the refusal of the Entry Clearance Officer Chennai to grant him entry clearance as the spouse of Krishnaveni Ketheeshkumar "the Sponsor".

2. The Sponsor, who is also a citizen of Sri Lanka, is present in the United Kingdom on account of being a dependant family member of her father who has been granted refugee status.

Procedural History

3. This appeal has a distinct history and it is necessary to recite it here. The Appellant and the Sponsor married in Sri Lanka in 2010. She subsequently gave birth to their child, in the United Kingdom, on 11th October 2011.
4. The Appellant applied for entry clearance on 2nd July 2012. His application was considered and refused under the provisions of paragraph 281 (the old Rules). The date of refusal is 7th February 2013.
5. The Entry Clearance Officer refused the application under the Immigration Rules because the Sponsor, although present in the UK was not settled there, since her Sri Lankan passport showed her to possess discretionary leave only until 6th June 2015.
6. The Appellant appealed the refusal; the grounds of appeal state:

“The Applicant’s wife has been present and settled in the UK for 6 years albeit with discretionary leave until its expiration in 2015. It is inevitable that she would be granted ILR in the future because she clearly does not lead an independent life and is reliant on her parents and as such should not be compelled to relocate from the UK and expected to fit in, adapt and establish a new livelihood elsewhere with her British born child”.
7. When the appeal came before the First-tier Tribunal Judge, Counsel on behalf of the Appellant conceded that the Appellant could not meet the Immigration Rules and that the only issue before the F-tT was whether the refusal of entry clearance amounted to a breach of the Appellant’s Article 8 ECHR rights. The First-tier Tribunal Judge having heard evidence dismissed the appeal both under the Immigration Rules and Article 8.
8. The Appellant sought permission to appeal. The application seeking permission was made out of time. In his consideration of whether or not to grant permission, First-tier Tribunal Judge Frankish said,

“In a determination promulgated on February 2014 F-tT J Nicholls dismissed an appeal under article 8 against refusal of entry clearance as the dependant spouse of a sponsor with limited leave until 6.6.15 on the grounds that no breach thereby arose. The application was submitted a month and a half out of time the special circumstances meriting an extension of time in respect of which were said to be that: the appellant fell out with his previous solicitors and it took that long to get the file off them. That does not amount to special reasons because a holding application could have been submitted. Permission to appeal out of time is refused. The application is not admitted. However, if the application had been made in time it would have been refused for the following reasons.

The application for permission to appeal asserts that article 8 has been incorrectly applied per Razgar -v- SSHD (204) 27; after 6 years here, there are insurmountable obstacles to the sponsor returning home to Sri Lanka with his wife and child where they would be a lot poorer (Singh (2003) EWCA Civ 248).

It was accepted that the sponsoring wife earns nowhere near enough here to support the family unit while, with the appellant being a fisherman in Sri Lanka, they will be even poorer there. However, nothing in this application indicates that article 8 serves to entitle the appellant to live here outside of the Rules”.

9. Despite Judge Frankish clearly indicating in the body of his decision that permission to appeal out of time was refused and despite saying that even if the application had been in time it would still have been refused, nevertheless the head note to the permission reads “**PTA Granted**”. Thus the matter comes before me as an error of law hearing, to determine whether Judge Nicholls’ determination discloses an error such that it needs to be set aside and remade.

The Hearing

10. Before me the Appellant was represented by Mr Lingajothy and the Respondent by Mr Saunders. At the outset of the hearing Mr Lingajothy sought permission to adduce further evidence under Rule 15(1) of the Procedure Rules. That further evidence is listed and appended to a letter from Linga & Co dated 9th June 2014 (the day before the hearing). That letter states that a witness statement enclosed,
 - (i) contains pertinent information “unincorporated” in the previous witness statements provided,
 - (ii) evidence overlooked by the First-tier Tribunal,
 - (iii) evidence which “unfortunately” the Appellant did not provide including confirmation of his daughter’s play school attendance; a Sponsor’s letter for counselling and the Appellant’s psychiatric report.
11. I reminded Mr Lingajothy that this is an out-of-country appeal. I noted that the Appellant was represented by Counsel at the hearing before the First-tier Tribunal Judge. Mr Lingajothy failed to persuade me of two matters. Firstly that the evidence he now sought to adduce was in existence at the date of decision and secondly that there was good reason why it was not placed before the First-tier Tribunal Judge.
12. I declined to admit this evidence. It was clear to me that the evidence above not only post dated the date of decision, it did so by a long margin and could not therefore have been contemplated by the Entry Clearance Officer or indeed the First-tier Tribunal Judge. The appropriate course if further relevant evidence becomes available is to submit a fresh application.

13. Mr Lingajothy's submissions before me centred on the grounds seeking permission. What they amounted to is this:
- (i) The First-tier Tribunal erred in regarding the Appellant's human rights under Article 8 because he failed to consider insurmountable obstacles of relocation to Sri Lanka for the Appellant (sic) and her British born child. I take this to mean that the Sponsor cannot relocate to Sri Lanka.
14. The insurmountable obstacles which he put forward are:
- (1) The Sponsor has been residing in the UK for six years and has been and is financially and emotionally dependent on her parents with whom she lives.
 - (2) She could not adapt once more to life in Sri Lanka and in any event the Appellant does not have the means to support her and their child there.
 - (3) The Sponsor has no financial resources or incentive to return to her country of origin.
15. Mr Saunders on behalf of the Respondent submitted that the Judge had generously looked at Article 8 outside the Rules when he did not need to do so. I disagree with Mr Saunders on that point. This is an application made under paragraph 281 (the old Rules) and furthermore Article 8 ECHR was raised in the grounds of appeal and referred to in the Entry Clearance Manager's review. The Respondent's representative at the First-tier Tribunal hearing certainly seemed to accept that an Article 8 consideration was permitted. However in the event nothing turns on this.
16. Mr Saunders' other submission amounted to this. The Judge fully considered all the evidence that was before him in paragraphs 18 to 26 of a determination which is exemplary in its thoroughness. The Judge made findings of fact which were open to him. There was nothing inadequate in his reasons for finding as he did. The Judge concluded that it would not be unreasonable to expect the Sponsor and their child to return to Sri Lanka. There was no evidence to show that the child was developing other than normally. This case disclosed nothing of an exceptional nature such as to bring the Appellant within Article 8 ECHR. The grounds seeking permission amounted to no more than a disagreement with the full and careful findings made by the First-tier Tribunal Judge.

Consideration

17. It is common ground that the Appellant and the Sponsor do not meet the requirements of the Immigration Rules. At the date of application, the Sponsor was not settled within the meaning of the Immigration Rules. What was before the First-tier Tribunal Judge was one issue only, that of Article 8 ECHR. I note, as did the First-tier Tribunal Judge, that the Appellant and Sponsor's marriage took place after the Sponsor had

relocated to the UK. The Sponsor has returned to Sri Lanka, by her own account, on three occasions. I note also that the parties have been in continuous contact by telephone and Internet. The Sponsor accepts that she is unable to financially support the Appellant and their daughter here in the United Kingdom. She herself is dependant financially and I am told emotionally, on her own parents.

18. The First-tier Tribunal Judge addressed himself on the *Razgar* test, took into account all the evidence that was available to him including at paragraph 23 the evidence concerning the Appellant's child and the best interests of the child, but nevertheless concluded that it would not be disproportionate to refuse the Appellant entry clearance.
19. The "insurmountable obstacles" which Mr Lingajothy referred to in his submissions, were fully considered by the First-tier Tribunal Judge.
20. The Judge clearly weighed all matters in the balance. For the foregoing reasons I find the determination of the First-tier Tribunal Judge discloses no error of law.

DECISION

21. The First-tier Tribunal Judge determination discloses no error of law. This appeal is dismissed.

No anonymity direction is made

Signature

Judge of the Upper Tribunal

Dated

I have dismissed the appeal and therefore there can be no fee award.

Signature

Dated