



IAC-TH-WYL-V1

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

Appeal Numbers: IA/39219/2014  
IA/00502/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 23 March 2016**

**Decision &  
Promulgated  
On 8 April 2016**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE APLEYARD**

**Between**

**MR RAMESH THAVARASASINGAM - FIRST APPELLANT  
MRS JEEVANA RAMESH - SECOND APPELLANT  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms V Miskiel, Counsel

For the Respondent: Mr T Melvin, Home Office presenting Officer

**DECISION AND REASONS**

1. Both appellants are citizens of Sri Lanka who on 5 August 2014 made combined applications for leave to remain in the United Kingdom as Tier 1 (Entrepreneur) Migrants under the points-based system and for biometric

residence permits. Their applications were refused on 1 October 2014 when the respondent concluded that she was satisfied that the first appellant had failed to provide the required documentation under paragraph 41-SD(e)(iii) of Appendix A of the Immigration Rules and the second appellant's application was accordingly also refused but under paragraph 319C of the Immigration Rules as the respondent was satisfied that she did not meet the requirements of paragraph 319C(b) of the Immigration Rules.

2. The appellants appealed and following a hearing at Hatton Cross Judge of the First-tier Tribunal I Malcolm, in a decision dated 20 May 2015, dismissed their appeals under both the Immigration Rules and on Article 8 grounds.
3. The appellants sought permission to appeal which was initially refused but granted on a renewed application by Upper Tribunal Judge Frances on 9 October 2015. Her reasons for so doing were:-
  - “1. The Appellants are citizens of Sri Lanka. They appeal against the decision of First-tier Tribunal Judge I Malcolm dismissing their appeals against the refusal of leave to remain as a Tier 1 (Entrepreneur) Migrant and dependant under the Immigration Rules and on Article 8 grounds.
  2. It is arguable that the Judge failed to properly apply paragraph 41-SD(e)(iii)(1) which provides for a period starting before 11<sup>th</sup> July 2014 “up to no earlier than three months before the date of application”. The application was made on 5<sup>th</sup> August 2014. It is arguable that the Judge erred in law in failing to consider material after 5<sup>th</sup> May 2014. The grounds are arguable.”
4. Thus the appeals came before me today.
5. I note that in both the skeleton argument put before the First-tier Tribunal and that put before me today there is reference in paragraph 1 to an assertion that the judge failed “to consider the child's best interest under Section 55 BCIA 2009”. I can see no evidence in relation to any child forming part of the grounds relied upon in seeking permission to appeal and in any event permission was not granted in relation to this issue and it was not relied upon by Counsel in her submissions today.
6. Three grounds of appeal were put forward none of which disclosed a material error of law.
7. Firstly it is said the judge failed to consider all the submissions made in Counsel's skeleton argument and orally at the appeal hearing to the effect that the respondent's decision was procedurally unfair because of the Rule change regarding advertising material under paragraph 41-SD(e)(iii)(1) coming into force on 11 July 2014 but only having been announced in HC 532 the previous day. Accordingly it was submitted that the respondent's

decision was not in accordance with the law. The judge should have allowed the appeal as not in accordance with the law and remitted it back. Further or alternatively the judge failed to give any adequate reasons or at all for the finding that the respondent's decision was not procedurally unfair contrary to the principles pronounced in paragraph 14 of **Budhathoki (reasons for decision) [2014] UKUT 00341 (IAC)** in light of the Rule change without the normal 21 days notice having been given under the negative resolution procedure. Further, the judge misdirected herself at paragraph 40 of her decision by not allowing the appeal as the Immigration Rules had in fact been met.

8. Secondly it is asserted that the judge has also failed to consider the additional submissions at paragraphs 7 and 8 of the skeleton argument that because of the procedural unfairness of the Rule change the respondent should have considered the additional post 11 July 2014 advertising material and the respondent should have exercised evidential flexibility and allowed the application exceptionally under paragraph 245AA(d)(iii) as the Rule could not be met as it was only announced on 10 July 2014 and the appellant had already submitted proof of his domain webhosting dated 29 June 2014 and the business card and advertising leaflets.
9. Finally by reason of the matters raised in the first two grounds the appellants' appeals should have been allowed under Article 8 ECHR in the alternative as the respondent's decision is not in accordance with the law. The judge misdirected herself at paragraph 44 of her decision that the appellants could make further applications.
10. Mr Melvin's submission was that the judge in coming to her conclusions had interpreted the Immigration Rules correctly, that there is no unfairness in the Rule change or indeed the points-based system. There is no material error of law within the judge's decision.
11. On the face of it the changes introduced to the Rules from 11 July 2014 were prejudicial to the applications of these two particular appellants. It has to be acknowledged though that such changes are the expression of policy changes by the Secretary of State whose responsibility was to comply with Parliamentary procedures following Statements of Changes. Accordingly it was not for the First-tier Tribunal Judge to review such expressions of policy by the Secretary of State. In any event the appellants were unable to meet the requirements of the Immigration Rules and there was no basis upon which to find the respondent's decision was unlawful thereby enabling the appeal to possibly be allowed on Article 8 grounds as is asserted by Ms Miszkiel. Further I find she is misguided in her other submission that the respondent herself interprets two elements of the Rules differently when logically they should both be applied in the same way.
12. Even if Judge Malcolm erred in suggesting that a further application could be made that is not a material error and would not have led to a different

outcome of the Article 8 ground of appeal put before her. The Judge has given adequate reasons having considered all the issues in these appeals. Her reasoning is legally adequate. The issue of evidential flexibility was not available to these appellants to rely on.

13. The nub of the appeal is that the appellants could not meet the requirements of the relevant Immigration Rules and there was nothing disproportionate in terms of Article 8. That was the finding of the Judge which was open to be made on the evidence before her.
14. There is here no material error of law.

### **Conclusions**

15. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
16. I do not set aside the decision.

Signed

Date 30 March 2016.

Deputy Upper Tribunal Judge Appleyard