IAC-AH-CJ-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/11661/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 6th January 2016	**On 15th January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

MRS MITHULA UTHAYABASKARAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Spurling, Counsel instructed by David Benson Solicitors
For the Respondent: Mr S Staunton, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Sri Lanka whose appeal under the Immigration Rules and the 1950 Convention was dismissed by First-tier Tribunal Judge Maxwell in a decision promulgated on 24th June 2015. The grounds of application were lodged essentially on the basis that the judge having found there was family life between the Appellant and her family had failed to go on and consider the case under Article 8 ECHR. This was particularly important because there had been a delay of fourteen months in the Secretary of State deciding the application. That delay was a factor

which could weigh in favour of an Appellant – see **EB (Kosovo) [2008] UKHL 40**.

2. Permission to appeal was granted on the basis that the judge may have materially erred by not carrying out a full **Razgar [2004] UKHL 27** analysis under Article 8 particularly given the circumstances of the case were not limited to the Respondent's delay in making a decision which might have prejudiced the Appellant.

3. The Respondent lodged a Rule 24 notice observing that it was now settled law that in order to venture into a freestanding Article 8 assessment there had to be compelling circumstances which were not covered by the Rules. It was submitted that there were no compelling circumstances in this case over and above the requirements in the Rules to justify venturing into a **Razgar** analysis. Thus the case called before me on the above date.

4. For the Appellant Mr Spurling relied on the grounds. There had been no consideration of the substantive facts of the case. There were no factual findings relevant to Article 8. Absent a proper consideration of the facts it was impossible to consider whether compelling circumstances arose. I was asked to conclude that there had been a material error in law and the matter should be sent back to the First-tier Tribunal.

5. For the Respondent Mr Staunton relied on the Rule 24 response and asked that I uphold the decision.

6. I reserved my decision.

Conclusions

7. Neither party before me had appeared at the First-tier Tribunal and there does not appear to be a Record of Proceedings on file which would allow me to have seen the extent of which, if at all, Article 8 was argued before the judge. I note that Article 8 is mentioned in Ground 9 of the Grounds of Appeal from the Entry Clearance Officer. It can be said without fear of contradiction that Article 8 is regularly argued in an appeal where someone seeks entry to the United Kingdom under the Immigration Rules. Equally it can be said that it would be a rare case where an appeal fails under the Immigration Rules but is allowed under Article 8.

8. It is arguable that the judge did touch on human rights in the final sentence of paragraph 17 of his decision and in paragraph 18 he found that the decision appealed against would not cause the United Kingdom to be in breach of the law or its obligations under the 1950 Convention. However it has to be said that the decision goes no further than that and no reasoning is applied. As Mr Spurling pointed out there is no consideration of substantive facts of the case and what flows from that in relation to Article 8. It cannot be said that the Article 8 case was bound to fail. In my view it was necessary for the judge to go further than he did and set out the basic facts of the Appellant's family life and why he

considered (as it appears he did) that there was no breach of the Appellant's fundamental but qualified rights under Article 8 if the appeal was dismissed.

9. Absent reasons for the apparent dismissal of the appeal under Article 8 I have concluded that the decision of the judge is significantly incomplete and because of that there is a material error in law. It is on that basis that the decision will have to be set aside and the case heard again by the First-tier Tribunal.

10. For the sake of clarity the next decision will be confined to an assessment under the Appellant's rights under Article 8 ECHR outside the rules. On the basis that further fact-finding is necessary the decision of the First-tier Tribunal is set aside. Under Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 the nature and extent of the judicial fact-finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal. There is no need for an anonymity order.

Notice of Decision

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

12. I set aside the decision.

13. I remit the appeal to the First-tier Tribunal.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge J G Macdonald