



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

Appeal Number: HU/13927/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 21st July 2017**

**Decision & Reasons
Promulgated
On 03rd August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR INDRAJITH HEWA ALAWATTHA GAMAGE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Jaffar, Counsel

For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Sri Lanka born on 1st August 1975. The Appellant originally arrived in the UK with entry clearance valid to 4th August 2010. That application was subsequently extended on a number of occasions and his current in-time application was made on 9th March 2015. That application was made under the terms of paragraph 295G of the

Immigration Rules on the basis that the Appellant sought indefinite leave to remain as the spouse of a person present and settled in the United Kingdom. That application was refused under the Immigration Rules by Notice of Refusal dated 3rd December 2015.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Mayall sitting at Hatton Cross on 22nd March 2017. In a decision and reasons promulgated on 8th May 2015 the Appellant's appeal was dismissed both under the Immigration Rules and on human rights grounds.
3. On 12th May 2017 Grounds of Appeal were lodged to the Upper Tribunal. On 1st June 2017 First-tier Tribunal Judge Andrew granted permission to appeal. Judge Andrew's reasoning is important. He noted that it was apparent that the Respondent's representative raised a new issue during her submissions before the First-tier Tribunal thus not giving the Appellant the opportunity to answer the issue or to adduce additional evidence. Further it was noted that no application for an adjournment was made although the Appellant's representative's note refers to an objection as to a line of cross-examination and being told by the judge not to intervene. Accordingly it was contended that the Appellant may not have had a fair hearing and that that amounted to an arguable error of law.
4. It was on that basis that the appeal comes before me to determine whether or not there is a material error of law. The Appellant appears by his instructed Counsel Mr Jaffar. The Secretary of State appears by her Home Office Presenting Officer Mr Duffy.
5. Mr Duffy draws to my attention a directions note dated 14th July which effectively is a note provided by the Secretary of State's representative who appeared before the First-tier Tribunal. He indicates that he does not consider it is appropriate for there to be submissions on the issue extant. Having considered the file and having read the note he indicates the Secretary of State does not oppose the appeal.

The Law

6. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
7. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law

for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

8. The acceptance by the Secretary of State to the Grounds of Appeal are well made. It is clear that in the circumstances described by Judge Andrew in granting permission and by Mr Jaffar in his Grounds of Appeal (albeit that he was not present before the First-tier Tribunal) that a material unfairness may well have arisen to the Appellant and in such circumstances the correct approach is to remit the matter back to the First-tier Tribunal with none of the findings of fact to stand.

Decision and Directions

The decision of the First-tier Tribunal contains a material error of law and is set aside. The following directions shall apply:-

- (1) That the appeal be remitted to the First-tier Tribunal at Hatton Cross to be heard on the first available date 28 days hence with an ELH of 2.5 hours before any First-tier Tribunal Judge other than Immigration Judge Mayall.
- (2) None of the findings of fact of the First-tier Tribunal Judge are to stand.
- (3) That there be leave to either party to serve on the other party and file at the Tribunal an up-to-date bundle of documents upon which they intend to rely at least seven days prior to the restored hearing date.
- (4) In the event that the Appellant's legal representatives consider that an interpreter is required at the restored hearing they do notify the Tribunal Service within seven days of receipt of these directions.

No anonymity direction is made.

Signed

Date 26th July 2017

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date 26th July 2017

Deputy Upper Tribunal Judge D N Harris