Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: HU/19848/2018**
HU/19849/2018
HU/19850/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19 August 2019	**On 09 September 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

EL (FIRST APPELLANT)
JW (SECOND APPELLANT)
KW (THIRD APPELLANT)
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Murphy, Counsel instructed by Farani Taylor Solicitors
For the Respondent: Mr Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. There are three appellants in this appeal. I will refer to the first appellant as EL, the second appellant (who is EL's husband) as JW and the third appellant (who is the child of EL and JW) as KW.

2. The appellants are citizens of Sri Lanka. JW entered the UK as a student in 2010 and was joined by his wife EL in 2013. KW was born in the UK on 25

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August 2016. Following various grants of further leave their leave expired in November 2016. The appellants made a human rights claim to the First-tier Tribunal which was heard by Judge of the First-tier Tribunal Parker at Taylor House on 11 April 2019. In a decision promulgated on 29 May 2019, the judge dismissed the appeal. The appellants are now appealing against the decision of the First-tier Tribunal.

The Appellants' Claim

3. The appellants claim that removing them from the UK would represent a disproportionate interference with their private and family life because of the length of time they have been in, and their integration into, the UK; because it is in the best interests of their child to remain in the UK; and because there would be very significant obstacles to their integration into Sri Lanka.

4. They have given two reasons why there would be very significant obstacles. The first is that EL suffers from mental health problems. The evidence to support this is contained in a number of medical letters. Amongst other things, there is correspondence from several professionals describing EL as having suicidal thoughts and suffering from anxiety, depression and PTSD following a traumatic birth and delivery. The second reason why the appellants claim that there are obstacles to integration in Sri Lanka is that KW has language and speech problems in respect of which there has been extensive correspondence (although no detailed assessment) and there is a suspicion that he may meet the criteria to be diagnosed with autism.

Decision of the First-tier Tribunal

5. The judge found that there would be no breach of family life by returning the family to Sri Lanka as they would be returning as a complete family unit.

6. The judge considered whether EL's medical condition met the threshold in *N* [2005] UKHL 31 and *Paposhvili v Belgium* and concluded that even applying the *Paposhvili* threshold it would not be contrary to Article 3 to return her to Sri Lanka because of her medical condition.

7. The judge stated at paragraph 45 that:

> "In relation to suicidal ideation [EL] is left alone when the first appellant goes out for food shopping and both appellants confirm this happens regularly".

8. At paragraph 48 the judge noted that EL had attempted suicide on one occasion but stated that the fact she is left alone regularly suggests there is not a high risk.

9. The judge referred at paragraphs 45 and 46 to the medical evidence regarding EL and at paragraph 49 to the evidence concerning KW,

describing him as suffering from speech and language issues and currently attending therapy sessions for this.

10. The judge found at paragraph 50 that the appellants:

> "Are citizens of Sri Lanka who have spent the vast majority of their life in that country and will be able to assist the son's integration into Sri Lanka. There is a functional educational system which the son will be entitled to enrol in. Basic internet searches indicate the presence of specialists in language and speech in Sri Lanka".

11. At paragraphs 54 to 55 the judge concluded:

> "The appellants have not lived in this country for twenty years and failed to meet the requirements of 276ADE. They are not under the age of 25 and there are no significant obstacles to their integration. They have resided in Sri Lanka including their childhood, formative years and a significant portion of their lives.
>
> They will return as a family unit no breach of their family life. The youngest child is only 2 and can adapt to life there. Their private lives not be interfered to such a level that the decision is not proportionate. The best interest of the child applying Section 55 is to be with her family and that can be maintained on return. They have retained knowledge of the life, language and culture. They would not face significant obstacles to reintegrating into life".

Grounds of Appeal and Submissions

12. The grounds of appeal argue that the judge failed to consider that the appellants could not in practice return to the village where their families live given the absence of mental health facilities and would therefore need to relocate to a part of Sri Lanka where they lack support from family and friends.

13. The grounds also maintain that the judge was not entitled to draw an inference from EL being left alone when JW leaves the house that the suicide risk is not high as an assessment as to whether there is such a risk would need to have been based on expert evidence.

14. The grounds also maintain that the judge failed to address the suicide risk on return to Sri Lanka as opposed to the present risk in the UK.

15. In addition, there is an argument in the grounds that there was a failure to consider the evidence of the stigma attached to mental health problems in Sri Lanka and the implications this would have for the appellants.

16. Further, the grounds contend that there was a failure to consider how the help KW currently receives would be available in Sri Lanka or the impact of its absence.

17. It is also argued that there was a failure to consider how EL's mental health problems would affect her ability to assist her son or JW's ability to assist him given the needs of EL which he would need to provide for.

18. At the hearing Mr Murphy argued that the judge's approach to the very significant obstacles test in paragraph 276ADE of the Immigration Rules was flawed because the judge failed to have regard to the implications for the appellants of the combination of:

    (a) EL having serious mental health problems;

    (b) KW having significant developmental/communication problems;

    (c) the family needing to reside away from any possible support in their home village in order to access medical treatment for both EL and KW; and

    (d) the lack of funds which would mean that the family would be destitute and not able to afford the necessary treatment for either EL or KW.

19. Mr Murphy also submitted that the judge failed to address the best interests of KW. He argued that it was not sufficient for the judge to simply say that it was in KW's best interests to remain with his parents without engaging in a distinct assessment of whether it would be in his best interests to remain in the UK with his parents. Mr Murphy argued that had such an assessment been carried out, and had the judge made a clear and explicit finding that it was in KW's best interests to remain with his parents in the UK, that factor, taken as a primary consideration in the proportionality assessment, might have tipped the scales in favour of the appellants.

20. Mr Murphy also argued that as the judge had not rejected the evidence of EL and JW about EL's need for psychiatric care and had not rejected JW's evidence about the family's ability to afford to accommodate themselves, this was a case where the judge should properly have considered the significant obstacles to integration in light of those factors.

21. Mr Murphy also referred to the country guidance case of *GJ and others (post-civil war: returnees) Sri Lanka CG* [2013] UKUT 00319 (IAC) and argued that regard should be had to the findings in that case about the very limited availability of psychiatric care in Sri Lanka. He referred to paragraph 454 of *GJ* where it is stated that there are only 25 working psychiatrists in Sri Lanka and that money spent on mental health goes primarily to large mental health institutions in the capital city which are inaccessible and do not provide appropriate care for mentally ill people.

22. Mr Avery's response to these arguments was that the judge had addressed all of the appropriate issues. He highlighted that KW was a 2 year old and there was no evidence before the judge to show an independent private life. He argued that it was sufficient to consider KW's best interests in

terms of remaining with his parents, neither of whom have a lawful basis to remain in the UK.

23. He argued that the medical evidence regarding both EL and KW was "thin". With regard to KW, he observed that there were many letters concerning appointments and referrals but an absence of actual evidence about his level and degree of disability. He pointed out that there is no evidence stating a diagnosis of autism.

24. With respect to EL, Mr Avery argued that the evidence did not establish a high risk of suicide. Mr Avery also argued that *GJ* is not comparable as the condition of the appellant in that case, and the psychiatric evidence to support the claim in *GJ,* was an order of magnitude different.

Analysis

25. I am satisfied that the decision does not contain a material error of law.

26. The appellants' case rests on the assertion that EL and/or KW have a serious medical condition that creates a significant obstacle to relocation to Sri Lanka. However, the evidence that was before the First-tier Tribunal was not sufficient to justify such conclusions being reached.

27. Regarding EL, there was no expert report or medical correspondence to support the contention that she was at high risk of suicide either in the UK or on return to Sri Lanka. The medical evidence concerning EL taken at its highest cannot, on any legitimate view, support the conclusion that she meets the threshold of risk in *N* or *Paposhvili*; or in respect of suicide that set out in *J v SSHD* [2005] EWCA Civ 629 and *Y (Sri Lanka) v SSHD* [2009] EWCA Civ 362. As pointed out by Mr Avery, the evidence to support EL's risk of suicide falls a long way of that which was before the Tribunal in *GJ*.

28. Similarly, there was an absence of evidence before the First-tier Tribunal to support a finding that KW suffers from a serious condition that would hinder – or create an obstacle to – his relocation to Sri Lanka with his parents. There were several letters indicating that there will be assessments of KW but there was no detailed report, either from an expert or clinician.

29. It is against the backdrop of this evidence about EL and KW that the decision of Judge Parker and the grounds of appeal advanced by the appellants need to be considered.

30. The appellants argue that there was a failure to consider that they would not have family support because they would need to relocate to a city to access medical facilities in Sri Lanka. This argument is misconceived as there was nothing in the decision to indicate that the support of wider family was necessary for removal to be proportionate.

31. The argument that the judge erred by finding that the suicide risk was not high because EL could be left alone is equally unpersuasive. The burden

of proof lay with the appellants to show there was a high risk of suicide and the evidence before the First-tier Tribunal, taken at its highest, could not – and does not – support such a conclusion, given the absence of expert evidence or correspondence from a psychiatrist describing and explaining the basis for considering there to be a high risk of suicide, either in the UK or upon return to Sri Lanka.

32. I accept that the judge did not make a specific finding about stigma being attached to mental health problems in Sri Lanka. However, I am satisfied that any finding that there is such a stigma would not have affected the outcome of the appeal given that the medical evidence that was before the Tribunal does not support a conclusion that EL will have a high risk of suicide or very severe mental health conditions that would put her in the category of person for whom a medical condition or risk of suicide should prevent removal from the UK under Article 3 of the ECHR.

33. The grounds concerning KW are also unpersuasive for the same reason, which is that there was an absence of evidence to support the proposition that he has a serious developmental or medical condition that would be an obstacle to living in or integrating into Sri Lanka.

34. Mr Murphy also submitted that the decision was deficient because of a failure to consider whether it would be in the best interests of KW to remain with his parents in the UK. I am not persuaded by this argument. Mr Murphy is correct that there is no explicit finding on this point in the decision. However, KW was only 2 years old at the time of the First-tier Tribunal decision and there was an absence of evidence (as discussed above) to show he has a development or medical condition that would be an obstacle to integration into Sri Lanka. In the absence of any such evidence, it was clearly open to the judge to find that it was in KW's best interests to remain with his parents either within or outside of the UK.

35. The appellants' case, in summary, is that the First-tier Tribunal failed to have proper regard to the severity of the medical/health problems faced by EL and KW but the claim founders because the evidence that was before the First-tier Tribunal does not support that the problems are as severe as the appellants would need to establish in order to succeed in their claim. There is, in respect of EL, some evidence to indicate mental health problems and possible suicidal ideation but it falls a long way short of the expert or clinical psychiatric opinion that would be necessary to establish a claim under Article 3 or tip the balancing exercise in favour of the appellants under Article 8 ECHR. In respect of KW, the evidence before the First-tier Tribunal, likewise, does not support a finding that he has very significant developmental or medical problems. Mr Murphy observed that a diagnosis of autism is often made at a later age. That may well be the case but the judge was required to decide the appeal based on the evidence that was before her. I am satisfied that the judge, for the reasons she gave, and based on the evidence that was before her, was entitled to dismiss the human rights claim. I therefore dismiss the appeal.

Notice of Decision

The decision of the First-tier Tribunal does not contain a material error of law and stands.

The appeal is dismissed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Upper Tribunal Judge Sheridan

Dated: 6 September 2019