



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

Appeal Number: PA/01521/2019

THE IMMIGRATION ACTS

**Heard at Birmingham Justice Decision & Reasons Promulgated
Centre
On 8th September 2020 On 15th September 2020**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

P S

(Anonymity Direction Made)

Respondent

Representation:

For the Appellant: Mrs H Aboni, Senior Home Office Presenting Officer
For the Respondent: Ms C Bayati, Counsel instructed by S Satha and Co
Solicitors

DECISION AND REASONS

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

An anonymity direction was made by the First-tier Tribunal ("the FtT"). As the appeal raises matters regarding a claim for international protection, it is appropriate for an anonymity direction to be made. Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. The appellant in the appeal before me is the Secretary of State for the Home Department (“SSHHD”) and the respondent to this appeal is Mr P S. However, for ease of reference, in the course of this decision I adopt the parties’ status as it was before the FtT. I refer to Mr P S as the appellant, and the Secretary of State as the respondent.

Remote Hearing

2. The hearing before me was a Skype for Business video conference hearing held during the Covid-19 pandemic. I sat at the Birmingham Civil Justice Centre and the hearing room and building were open to the public. The hearing was publicly listed, and I was addressed by the representatives in exactly the same way as I would have been, if the parties had attended the hearing together. The appellant joined the hearing by Skype. I was satisfied: that this constituted a hearing in open court; that the open justice principle has been secured; that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate. Neither party objected to a remote hearing, and I was satisfied that it was in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing because of the present need to take precautions against the spread of Covid-19, and to avoid delay. I was satisfied that a remote hearing would ensure the matter is dealt with fairly and justly in a way that is proportionate to the importance of the case, the complexity of the issues that arise, and the anticipated costs and resources of the parties. At the end of the hearing I was satisfied that both parties had been able to participate fully in the proceedings.

Introduction

3. The appellant is a national of Sri Lanka. He arrived in the UK in May 1998, aged 13, with his parents. The appellant’s immigration history is helpfully summarised at paragraph [2] of the decision of Judge Colvin:

“... His father claimed asylum that was refused but ILR was granted in April 2004 under the Family Amnesty exercise. The appellant’s first conviction was in March 2004 when he received 18 months conditional discharge and the second conviction was in March 2008 for affray when he received 21 months imprisonment. A deportation order was made in May 2009 with a First-tier Tribunal appeal being dismissed in October 2009 and a subsequent High Court Review led to the appeal being allowed on human rights grounds only in March 2010. He was granted ILR in June 2016. In September 2017 the appellant was convicted for dangerous driving and sentenced to 16 months imprisonment. A further deportation order was made on 17 December 2018.”

4. The appellant appealed the respondent’s decision of 17 December 2018 to refuse his protection and human rights claims. His appeal was allowed for reasons set out in a decision of First-tier Tribunal Judge Colvin promulgated on 23 January 2020.

The decision of Judge Colvin

5. The appellant attended the hearing of his appeal and gave evidence. His evidence is summarised at paragraphs [5] to [9] of the decision. There is nothing to be gained by repeating his claim in this decision. Judge Colvin also heard evidence from the appellant’s mother as set out in paragraphs [10] to [12] of her decision. The findings and conclusions reached by Judge Colvin are set out at paragraphs [27] to [47] of her decision. She noted, at [29], the previous deportation order made in 2009 following the appellant’s conviction for affray that resulted in a sentence of 21 months imprisonment. She noted that on that occasion, the appellant was said to have acted with others as a gang to attack a victim at his home.
6. Judge Colvin noted, at [29], the second deportation order made against the appellant following his conviction in September 2017 of dangerous driving resulting in a prison sentence of 16 months. She noted the sentencing remarks. At paragraph [30] she referred to the evidence before the Tribunal regarding the conduct of the appellant since his release from prison in November 2018 and the risk of reoffending.

7. The appellant's claim that his deportation would be contrary to the United Kingdom's obligations under the Refugee Convention is addressed at paragraphs [32] to [40] of the decision. Judge Colvin found that the appellant will be returning to Sri Lanka without any record of himself or his father having come to the adverse attention of the Sri Lankan authorities in the past, and concluded that the appellant has not established that he is at risk upon return to Sri Lanka under the Refugee Convention or on humanitarian grounds. Those findings and conclusions are not challenged by the appellant.

8. The Article 8 claim advanced by the appellant is addressed at paragraphs [41] to [47] of the decision. At paragraph [41], Judge Colvin noted that a previous appeal was allowed by the Upper Tribunal on Article 8 grounds for reasons set out in a decision promulgated on 12 March 2010. She stated:

“... This was based on findings set out at paragraphs 51 – 53 and included that, at that time, the appellant had been in the UK for 11 years continuously with his teens and adolescence having been spent here. He had a strong family life with his then wife and child in the UK who were British citizens and that they would be significantly affected by the deportation as it would lead to a prolonged separation and the daughter would be deprived of her father for a long and important part of her life. It was also found that the appellant had no close family or links with Sri Lanka and no one to whom he could turn for support in Sri Lanka as his entire family was in the UK and British citizens.”

9. At paragraph [42], Judge Colvin noted the appellant and his wife have been separated since 2015 and the appellant has been unable to have contact with his daughter since that time. Judge Colvin noted at paragraph [43], that the appellant has been lawfully in the UK since the age of 13 and resident in the UK for over half his life. She was satisfied that the appellant is socially and culturally integrated in the UK for reasons set out at paragraph [43] of her decision. The judge then went on to consider whether there would be very significant obstacles to the appellant's integration into Sri Lanka. At paragraph [44] she refers to the judgement of Lord Justice Sales in SSHD v Kamara [2016] EWCA Civ 813

and having directed herself to the “high test”, at paragraphs [45] and [46], stated:

“45. As stated above the Upper Tribunal in 2010 found that the appellant had no close family or links with Sri Lanka and no one to whom he could turn to for support as his parents and sister were in the UK. Whilst it seems from the evidence of his mother at this appeal that there are some relatives whom she stayed with when last visiting Sri Lanka in March 2019, it remains the case that the appellant himself has not visited the country since 2005 and has not remained in contact with anyone there. It is still the case that his close family members are in the UK. He is living with his mother and sister when she is not at university. And whilst I do not find on the evidence before me that family life under Article 8 is engaged with these adult family members I do find that the relationship between the appellant and his mother since the death of the father last November can reasonably be taken into account as part of the appellant’s private life. The appellant has clearly stepped into the role of supporting his mother as the only son including taking over running the family business. There is also evidence that the appellant has been upset and stressed since the breakdown of his marriage and lack of contact with his daughter – factors that are said to have led to his excessive drinking at the time of the offence – and is presently on medication for depression.

46. Although it is a difficult assessment to make I have reached the view – albeit on a fine balance – that the appellant is likely to face “very significant obstacles” in reintegrating into Sri Lanka. This is for the reasons mentioned above when taken cumulatively with the most important being his absence from the country for some 22 years since the age of 13, the lack of support from close family members in Sri Lanka and the changed family circumstances in the UK since the recent death of his father.”

10. Judge Colvin noted the deportation of the appellant from the UK is conducive to the public good and in the public interest because he has been convicted of an offence for which he has been sentenced to a period of imprisonment of at least 12 months but found that the private life exception set out paragraph 399A of the immigration rules applies.

The appeal before me

11. The respondent initially advanced two grounds of appeal. First, Judge Colvin erred in her analysis of whether there would be very significant obstacles to the appellants integration into Sri Lanka. The respondent accepts that Judge Colvin properly referred to the decision of the Court of Appeal in SSHD v Kamara [2016] EWCA Civ 813, but having done so,

submits Judge Colvin confined her assessment to the appellant's ties to the UK and Sri Lanka rather than addressing whether there would be very significant obstacles to integration. Second, and connected to the first ground, Judge Colvin failed to provide adequate reasons for her conclusion that there would be very significant obstacles to the appellant's integration into Sri Lanka, and disregarded relevant factors such as the appellant's educational qualifications, and the skills the appellant has acquired through employment. Permission to appeal was granted on both those grounds by Designated First-tier Tribunal Judge Macdonald on 18th February 2020.

12. The appeal was listed for hearing on 5 May 2020, but that hearing was vacated. In reply to directions issued by Upper Tribunal Judge O'Connor, the respondent provided written submissions dated 25th May 2020 in support of the assertion of an error of law, and on the question whether the First-tier Tribunal's decision should be set aside if error of law is found. The respondent also applied for permission to add a third ground of appeal. The respondent claimed Judge Colvin also erred in the reliance placed upon the findings made by the Tribunal in March 2010 when the previous appeal had been allowed on Article 8 grounds. The appellant filed and served written submissions in reply, that were received by the Tribunal on 26 May 2020. In the submissions filed, both parties objected to the determination of the question of whether the making of the First-tier Tribunal's decision involved the making of an error of law, without a hearing, but the parties agreed that a remote hearing is appropriate in all the circumstances. I granted the respondent permission to rely upon the additional ground of appeal that Judge Colvin adopted an erroneous approach to the previous findings made by the Tribunal in March 2010, and directed that the appeal be listed for a remote hearing.
13. On behalf of the respondent, Mrs Aboni adopted the respondent's written submissions dated 25th May 2020. The respondent submits that despite her self-direction in line with the decision of the Court of Appeal in SSHD v Kamara, Judge Colvin failed to conduct the 'broad evaluative

assessment' required. The respondent submits that in conducting her assessment, Judge Colvin took into account matters that are irrelevant such as the fact that the appellant is living with his mother and sister when she is not a university, and that he has stepped into the role of supporting his mother following the death of his father. The judge also had regard to the claim that the appellant has been upset and stressed since the breakdown of his marriage, but these are simply not germane to the issue as to whether there are very significant obstacles to the appellant's integration into Sri Lanka.

14. Mrs Aboni submits a wider assessment is required to determine whether the appellant is enough of an insider so that he could live and build relationships in Sri Lanka. The judge failed to carry out that assessment and the focus is upon the appellant's ties to the UK rather than the position upon return. The respondent submits that at paragraphs [45] and [46] of the decision, Judge Colvin failed to address the question that was to be determined by the Tribunal and failed to give adequate reasons to support the finding that there would be very significant obstacles to the appellant's integration into Sri Lanka. As to the third ground of appeal, Mrs Aboni submits the judge erred in her reliance upon the decision of the Tribunal promulgated in 2010. She accepts that the decision was, as Judge Colvin set out at paragraph [41], the "starting point", but, she submits, Judge Colvin failed to have adequate regard to the significant change in circumstances since that decision including the lengthy passage of time during which the appellant will undoubtedly have matured, and gained more life experience.
15. In reply, Ms Bayati adopted the written submissions in reply sent to the Tribunal on 26 May 2020. The appellant submits Judge Colvin properly directed herself to the decision of the Upper Tribunal in the appellant's previous appeal in March 2010 as the "starting point", and referred to the matters relied upon by the Tribunal when it allowed the previous appeal on Article 8 grounds. Ms Bayati submits Judge Colvin expressly referred to the fact that the appellant and his wife have been separated

since 2015 at paragraph [42] of her decision, and that is a clear acknowledgement that there has been a change in the appellant's circumstances. Ms Bayati submits Judge Colvin properly addressed the private life exceptions under paragraph 399A of the immigration rules, and in considering whether there are very significant obstacles to the appellant's integration in Sri Lanka, at paragraph [44], Judge Colvin noted the "high test" and the judgement of the Court of Appeal in SSHD v Kamara. She submits Judge Colvin then applied the relevant test to the facts of this case and it was open to Judge Colvin to conclude that there would be very significant obstacles to the appellant's integration into Sri Lanka for the reasons set out at paragraphs [45] and [46]. Ms Bayati submits that in reaching her decision, Judge Colvin made it clear that she had reached her conclusion, in particular, based upon the very considerable time the appellant has been outside of Sri Lanka, the lack of ties/support in Sri Lanka and the change in the family circumstances in the UK. She submits the appellant's circumstances in the UK are relevant to the assessment because they have a direct impact upon the appellant's ability to integrate in Sri Lanka. Ms Bayati submits that in reaching her decision, Judge Colvin was fully aware of the appellant's age, and his ability to work, and the Judge was not required to make express reference to those factors in her reasons. She submits the appeal amounts to nothing more than a disagreement with the conclusions reached by the Judge.

Discussion

16. There is in my judgement, no merit in the third ground of appeal concerning the reliance placed by Judge Colvin upon the decision of the Tribunal in 2010. It is clear from a careful reading of paragraphs [41] and [42] of her decision that Judge Colvin regarded the previous decision as nothing more than a "starting point", and she clearly had regard to the change in the appellant's circumstances since that decision. There was no obligation upon Judge Colvin to make express reference to the passage of time since that decision.

17. In assessing the Article 8 claim, Judge Colvin was required to consider whether paragraph 399 or 399A of the immigration rules apply. If not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A. As the appellant does not have children or a partner, paragraph 399 does not apply.
18. The respondent does not challenge the findings made by Judge Colvin that the appellant has been lawfully resident in the UK for most of his life and paragraph 399A(a) is met. For reasons set out at paragraph [43] of her decision Judge Colvin found the appellant is socially and culturally integrated in the UK, and thus paragraph 399A(b) is met.
19. The judge then went on to consider whether there would be very significant obstacles to the appellant's integration into Sri Lanka and addresses the question in two short paragraphs, at paragraphs [45] and [46]. Judge Colvin was undoubtedly entitled to have regard to the fact that the appellant himself has not visited Sri Lanka since 2005 and has not remained in contact with anyone there.
20. At [45], Judge Colvin noted that it remains the case that the appellant's close family members are in the UK. She refers to the evidence of the appellant's mother that there are some relatives with whom she stayed when she last visited Sri Lanka in March 2019. However, Judge Colvin does not appear to consider whether those relatives are able to, or could reasonably be expected to provide support to the appellant particularly in the short-term following his return to Sri Lanka.
21. At paragraph [45], Judge Colvin notes the appellant is living with his mother and sister when she is not at university. At [46], she noted the appellant has clearly stepped into the role of supporting his mother including taking over running the family business. She also noted there is evidence that the appellant has been upset and stressed since the breakdown of his marriage and the lack of contact with his daughter,

leading to excessive drinking at the time of the index offence and that the appellant is presently on medication for depression.

22. In my judgement, at paragraphs [45] and [46], Judge Colvin failed to adequately address the question whether there would be very significant obstacles to the appellant's integration into Sri Lanka. She failed to conduct the broad evaluative judgment as to whether the appellant will be enough of an insider in terms of understanding how life in the society in Sri Lanka is carried on and his capacity to participate in it, so as to have a reasonable opportunity to be accepted there, and to be able to operate on a day-to-day basis and to build up within a reasonable time, a variety of human relationships to give substance to his private or family life. The focus, erroneously, appears to have been upon the appellant's ties to the UK, rather than addressing the obstacles to integration into Sri Lanka.
23. In my judgement the decision of FtT Colvin is vitiated by a material error of law and the decision must be set aside.

Notice of Decision

24. The appeal is allowed. The decision of FtT Judge Colvin promulgated on 23rd January 2020 to allow the appeal on human rights grounds (*paragraph 399A of the Immigration Rules as an exception to deportation*) is set aside, and I remit the matter for re-hearing in the First-tier Tribunal, limited to the question whether the appellant's deportation would be contrary to the United Kingdom's obligations under Article 8 of the Human Rights Convention.
25. The findings and conclusions reached by FtT Judge Colvin at paragraphs [32] to [40], that the appellant's deportation would not be contrary to the United Kingdom's obligations under the Refugee Convention are preserved.

Signed
2020

Date

9th September

V. Mandalia

Upper Tribunal Judge Mandalia