



**Upper Tribunal  
Appeal Number:**

**(Immigration and Asylum Chamber)  
HU/19543/2019 (P)**

**THE IMMIGRATION ACTS**

**Decided under rule 34**

**On 17 February 2021**

**Decision & Reasons  
Promulgated**

**On 3 March 2021**

**Before**

**UPPER TRIBUNAL JUDGE KEKIĆ**

**Between**

**LAKSHIMAN RAMANAYAKE  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DECISION AND REASONS**

**Representation by way of written submissions :**

For the Appellant: Mr C Timson of Counsel instructed by Alison Law  
Solicitors

For the Respondent: Ms H Aboni, Senior Home Office Presenting  
Officer

### Background

1. This appeal comes before me following the grant of permission to appeal by First-tier Tribunal Judge Simpson on 30 April 2020 in respect of the determination of First-tier Tribunal Judges Garratt and Dainty, promulgated on 25 February 2020 following a hearing at Manchester on 13 February 2020.
2. The appellant is a Sri Lankan national of Sinhalese ethnicity born on 21 October 1962. He claims to have entered the UK in March 2001 but only came to the attention of the authorities when he made a human rights claim based on his private life in August 2019. That was refused on 13 November 2019 and gave rise to these proceedings. His claim is that he suffers from depression as a result of atrocities he witnessed in Sri Lanka, that he also has various other physical health issues, that he would be destitute on return because he had no family support and would find it difficult to obtain employment due to his age. He, therefore, maintains that he would face very significant obstacles on return. No asylum claim has been made.
3. The panel heard oral evidence and found that the appellant would not face very significant obstacles on return. It found that the appellant's ill health did not reach the threshold set out in N [2005] UKHL 31 or D [1997] 24 ECHR. It noted that he had never claimed asylum and that he came to the UK for economic reasons.
4. Permission was granted on the basis that the panel had arguably used the wrong test when assessing the article 8 private life claim under paragraph 276ADE (1)(vi) and that inadequate reasons had arguably been provided for the conclusions reached given his particular circumstances of age, ill health, absence of familial support and long absence from Sri Lanka.
5. The parties are both agreeable to a determination on the papers and on that basis I proceed to assess the appeal and the arguments made.

### Discussion and Conclusions

6. I have considered all the evidence and the submissions made.
7. The respondent maintains that the panel provided adequate reasons for the decision having considered the appellant's health conditions and absence of support. It is submitted that the panel properly concluded that the decision was prop and that there was no basis for a grant of leave outside the rules.

8. For the appellant it is submitted that the appellant's health and medical conditions were relevant matters for consideration when the issue of very significant obstacles was assessed. Whilst it is accepted that these may not reach the high article 3 threshold, it is argued that the panel was wrong to have only assessed the medical evidence on that basis. It is submitted that it should also have considered how the appellant's health would impact upon his ability to return and adjust to life in Sri Lanka. It is further submitted that no reasons are given for the conclusion under paragraph 276ADE(1)(vi).
9. It is plain that the panel only assessed the appellant's ill health in the context of whether the article 3 threshold had been met. Not only was this not a part of the appellant's claim but the panel also entirely omitted to consider how the appellant's mental and physical ill health would impact upon his ability to re-integrate into Sri Lanka society when combined with the other factors relied upon such as his age, lack of familial support and long absence from that country. Whilst it is by no means certain that these factors would, even combined, lead to a successful outcome, the appellant is entitled to have his appeal properly assessed and this has not been done in this case. The panel has regrettably applied the wrong test.
10. It is also the case that the panel's reasoning for why the requirements of 276ASE(1)(vi) were not met is inadequate. Although the panel accepted that there would be difficulties and hardships, it rejected the claim that these amounted to very significant obstacles. No reasons were, however, provided.
11. For these reasons, I conclude that the determination cannot stand and it is set aside in its entirety except as a Record of Proceedings. The appellant has not had a fair determination of his appeal and as fresh findings of fact will be required, the matter is remitted for re-hearing to the First-tier Tribunal. The appellant has not asked for any findings to be preserved.

#### Decision

12. The decision of the First-tier Tribunal contains an error of law which requires that it be set aside. The appeal is allowed to the extent that it is remitted to the First-tier Tribunal in Manchester for a fresh decision to be made on all matters. The appeal shall be heard by any First-tier Tribunal Judge except Judges Garratt and Dainty.
13. Directions shall be issued by the First-tier Tribunal in due course.

#### Anonymity

14. No request for an anonymity order has been made at any stage.

Signed

R. Kekić

Upper Tribunal Judge

Date: 17 February 2021