



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

Appeal Number: AA/03524/2013

THE IMMIGRATION ACTS

**Heard at : Field House
On : 10th October 2013**

**Date Sent
On : 29th October 2013**

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Before

Upper Tribunal Judge McKee

Between

THURAIRAJAH S/O NAGALINGAM

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms F. Allen, instructed by A & P Solicitors
For the Respondent: Mr Nigel Bramble of the Specialist Appeals Team

DETERMINATION AND REASONS

1. The appellant and his wife are an elderly couple from Sri Lanka, frail and in poor health. They arrived here with visitors' visas, ostensibly to visit their daughter, but shortly afterwards they claimed asylum. The claim was rejected, and an appeal

came before the First-tier Tribunal on 24th June 2013. Judge Morris dismissed the appeal, and for detailed and cogent reasons Judge Hemingway refused permission to appeal to the Upper Tribunal. The same grounds of appeal, with a small addition, were then put to the Upper Tribunal in a renewed application. Judge Freeman, in his customarily compressed style, considered three of the grounds, and gave permission on only one of them. When the appeal came before me, I thought there was some difficulty with the second and third of those grounds, which I discussed with the representatives.

2. The first ground (labelled (i)) presents no difficulty. Miss Jegarajah, who settled the grounds, had complained that Judge Morris ignored the Joint Presidential Guidance. Judge Freeman roundly sees off this ground. At (ii), however, Judge Freeman refers to “*this point*”, which at first blush might appear to mean the point about the Joint Presidential Guidance. But the (ii) is doing double service. It marks the second ground which the judge is considering, but it is also the (ii) at 3(ii) of Miss Jegarajah’s grounds, which is about increased militarism and the rehabilitation process. This ground concerns the appellant’s son, and it too is found not to be arguable. Judge Freeman’s (iii) corresponds to 3(iii) of Miss Jegarajah’s grounds, which is the only ground on which Judge Freeman granted permission.
3. This ground refers to paragraph 20(ii)(d) of the First-tier determination, i.e.

“even if it were accepted that the Appellant’s daughter was arrested in 2007, notwithstanding the discrepancy of some ten years in the dates given by the Appellant and his daughter, I find that it is not reasonably likely that this would have an impact on her elderly parents some four years after she left Sri Lanka;”
4. Clearly, what Judge Morris means is that the appellant and his wife are somewhat old to be of interest to the Sri Lankan authorities, and although their daughter was of interest, that was in 2007, and she left Sri Lanka four years ago. So the appellant and his wife are unlikely to be of adverse interest to the authorities now, on account of their daughter. But Miss Jegarajah puts a different gloss on this subparagraph :

“This finding implies that the Panel (*sic* : there was only one judge) had not appreciated the impact of multiple rape of the Applicants’ daughter upon the Applicants and is therefore perverse.”
5. That is not, it seems to me, what Judge Morris meant by “*impact*”. She was not wondering (or failing to wonder) about the emotional or psychological impact that the revelation of what happened to their daughter would have had on her parents. On the contrary, she was rejecting the notion that what had happened to the daughter some years ago would make the authorities take any interest in the parents at the present time. Judge Freeman, however, appears to take “*impact*” to mean what Miss Jegarajah takes it to mean, and wonders what difference this could make to the outcome of the appeal. “*But*”, he ends, “*on this point only, permission is given.*”
6. Miss Allen did not seek to dissuade me that my interpretation of paragraph 20(ii)(d) is wrong and, with great respect to my brother, I think Miss Jegarajah did misunderstand what Judge Morris was getting at. Ground (iii) essentially falls away once that is accepted, so Miss Allen strove valiantly to persuade me that the grant of permission entitled her to argue all the grounds, or at least to seek permission to argue all the grounds. Mr Bramble commented that two judges had already rejected those other grounds, and it does seem to me that the filtering mechanism of the

permission stage would be undermined if the grant of permission on one ground meant that all the grounds could be argued before the Upper Tribunal, regardless of their having been explicitly rejected. As Mr Bramble also commented, notice of Judge Freeman's decision on the application was sent to the parties on 9th August, and in the two months since then there has been no attempt by the solicitors to enlarge the basis on which permission was granted. It cannot be enlarged at this stage.

7. The plain fact is, this frail and elderly Tamil couple are not at risk of persecution by the Singhalese authorities. They would very much like to live in this country with their daughter, and there would have been an opportunity, after they arrived in this country and before the Rules changed on 9th July 2012, to apply to 'switch' under paragraph 317. Perhaps the evidence adduced in support of the visit visa applications and appeals meant that the couple could not show that they were mainly dependent financially on their sponsor here. Be that as it may, a valid claim for asylum cannot be established either.

DECISION

The appeal is dismissed.

Richard McKee
Judge of the Upper Tribunal

11th October 2013