Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/37198/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 8 August 2014	**On 7 October 2014**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MANKAIARKARASI RATNAM

Respondent

Representation:

For the Appellant: Mr E Tufan, a Senior Home Office Presenting Officer
For the Respondent: Mr R Solomon, instructed by Soma & Co, Solicitors

DETERMINATION AND REASONS

1. The respondent, Mankaiarkarasi Ratnam was born on 8 March 1946 and is a female citizen of Sri Lanka. She entered the United Kingdom in August 2012 as a visitor. In October 2012, she applied for indefinite leave to remain outside the Immigration Rules. That application was refused by a decision of the appellant dated 21 August

2013. In addition, the appellant gave directions for the respondent's removal by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. The respondent appealed against that decision to the First-tier Tribunal (Judge Maciel) which, in a determination promulgated on 10 March 2014, allowed the appeal under the Immigration Rules. The Secretary of State now appeals, with permission, to the Upper Tribunal. I shall hereafter refer to the appellant as "the respondent" and to the respondent as "the appellant" (as they appeared respectively before the First-tier Tribunal).

2. The appeal to the Upper Tribunal turns on a single issue. The appellant's application was considered under paragraph 276ADE of HC 395 (as amended). The appellant could not satisfy the requirement to have lived continuously in the United Kingdom for more than twenty years, but claimed that she had "no ties (including social, cultural or family) with the country to which she would have to go if required to leave the UK [Sri Lanka]" (see Paragraph 276ADE, (vi)). The First-tier Tribunal heard evidence from the appellant's daughter, Mantila Balachandran and also Mr Thuraiappah Balachandran, the appellant's son-in-law. The judge considered that oral evidence together with the documentary evidence, which included a report from the general practitioner currently treating the appellant. The judge found [21] that the appellant's husband had died and her children had left Sri Lanka. The appellant still has siblings living in Sri Lanka. The judge found that the appellant did not have a "continued connection to life" in Sri Lanka. That expression is a quotation from what the judge describes [18] as "modernised guidance" (*sic*) followed by the respondent's case workers as to the implementation of paragraph 276ADE although the judge does not provide any detailed source reference. The expression appears in a passage of the guidance document entitled "*Assessing whether there are 'no ties' (including social, cultural or family) with the country of origin*." This states that:

> When you assess whether an applicant has 'no ties'... with the country to which they would have to go if required to leave the UK a 'tie' means something more than just having a nationality of the country or having remote or abstract links to the country. It involves there being a continued connection to life in that country, something which ties an applicant to their country of origin.

3. Whatever the exact provenance of the "modernised guidance" I accept that it (1) emanates from the Home Office and (2) represents an attempt to apply the ratio of *Ogundimu (Article 8 – new rules) Nigeria* [2013] UKUT 00060 (IAC). The head note of *Ogundimu* provides:

1. *The expectation is that it will be an exceptional case in which permission to appeal to the Upper Tribunal should be granted where the lodging of the application for permission is more than 28 days out of time. Where, in such a case, a judge is minded to grant permission, the preferable course is to provide an opportunity to the respondent to make representations. This might be achieved by listing the permission application for oral hearing.*

2. *The introduction of the new Immigration Rules (HC 194) does not affect the circumstance that when considering Article 8 of the Human Rights Convention "for a settled migrant*

who has lawfully spent all or the major part of his or her childhood and youth in [this] country very serious reasons are required to justify expulsion." The principles derived from Maslov v Austria [2008] ECHR 546 are still be applied.

3. *Paragraph 399(a) of the Immigration Rules conflicts with the Secretary of State's duties under Article 3 of the UN Convention on the Rights of the Child 1989 and section 55 of the Borders, Citizenship and Immigration Act 2009. Little weight should be attached to this Rule when consideration is being given to the assessment of proportionality under Article 8 of the Human Rights Convention.*

4. *The natural and ordinary meaning of the word 'ties' in paragraph 399A of the Immigration Rules imports a concept involving something more than merely remote or abstract links to the country of proposed deportation or removal. It involves there being a connection to life in that country. Consideration of whether a person has 'no ties' to such a country must involve a rounded assessment of all of the relevant circumstances and is not to be limited to 'social, cultural and family' circumstances.*

On the facts of the appeal before it, the Tribunal found:

124. We recognise that the text under the rules is an exacting one. Consideration of whether a person has 'no ties' to such country must involve a rounded assessment of all the relevant circumstances and is not to be limited to 'social, cultural and family' circumstances. Nevertheless, we are satisfied that the appellant has no ties with Nigeria. He is a stranger to the country, the people, and the way of life. His father may have ties but they are not ties of the appellant or any ties that could result in support to the appellant in the event of his return there. Unsurprisingly, given the length of the appellant's residence here, all of his ties are with the United Kingdom. Consequently the appellant has so little connection with Nigeria so as to mean that the consequences for him in establishing private life there at the age of 28, after 22 years residence in the United Kingdom, would be 'unjustifiably harsh'.

125. Whilst each case turns on its own facts, circumstances relevant to the assessment of whether a person has ties to the country to which they would have to go if they were required to leave the United Kingdom must include, but are not limited to: the length of time a person has spent in the country to which he would have to go if he were required to leave the United Kingdom, the age that the person left that country, the exposure that person has had to the cultural norms of that country, whether that person speaks the language of the country, the extent of the family and friends that person has in the country to which he is being deported or removed and the quality of the relationships that person has with those friends and family members.

4. In the present appeal, the Tribunal found that it accepted that:

> The extent of the medical conditions is joint pains (sic), this means that [the appellant] requires the level of care which she is not getting in Sri Lanka. She needs assistance to do everyday tasks and she was not getting that assistance there despite her son-in-law paying for it. I note that a carer would have to travel to her village and many may be reluctant to do so. I accept that the son-in-law has encountered difficulties in securing a carer and that carer has proved to be inadequate. I note that there is an elderly sister in Sri Lanka but she is getting increasingly unable to assist the appellant and

> increasingly unable to meet the appellant when the latter was in Sri Lanka. The brothers live some distance away from the appellant are busy with their own families... the appellant was living an isolated life in Sri Lanka with little assistance from a carer... I find that securing a carer to provide this assistance [with bathing and cooking] has been unsuccessful for this family who are loathe to attempt to do so again. The appellant is settled with her family in the UK... She has four of her six children in the UK.

5. The appellant seeks to rely on an Administrative Court judgment (*Bailey* [2014] EWHC 1078 (Admin)). Andrews J found that:

> However, taking the Claimant's case at its absolute highest, even if one were to assume in Mrs Bailey's favour that she had no family ties whatsoever with Uganda, (in that she has no family members to whom she could return or with whom she could make contact) and even if one were to ignore the half siblings on the basis that she never had any contact with them anyway, that is not necessarily an end of the matter.

6. Andrews J found *Ogundimu* and also *Green (Article 8 – new rules)* [2013] UKUT 254 (IAC) to be of assistance. At [14]-[15] she concluded:

> 14. The court had already made it clear that consideration of whether a person has "no ties" to such other country must involve a rounded assessment of all the relevant circumstances and is not to be limited to social, cultural and family circumstances. It follows from that, that no single one of those factors can have a decisive bearing on the determination of whether there are "no ties" and thus the mere fact that an applicant has no family or friends in the country will not in and of itself lead inextricably to the conclusion that there are no ties. I agree with those submissions.
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> 15. In the present case, the decision maker was entitled to take into account the fact that Mrs Bailey had spent most of her formative years in Uganda, that she had only come to this jurisdiction in her twenties, that she had only been within this jurisdiction for some 8 years, that she had clearly had an exposure to the cultural norms of her country of origin, and that she spoke the language of that country. In the light of all those factors, in my judgment, it is impossible to say that the decision that she did not qualify under the relevant sub-rule of paragraph 276ADE was irrational, or unlawful, or *Wednesbury* unreasonable, even if one were to assume in her favour that she has no friends or relatives in Uganda. It plainly is not the sort of case with which the Upper Tribunal was concerned in Ogundimu or indeed in Green. Both of those were cases involving people who had come to this country as very young children and been granted leave to remain in the jurisdiction, who had no ties whatsoever with their country of origin, but who had then committed criminal offences and therefore appeared to be subject to compulsory deportation to that country, subject only to Article 8 considerations. But this is not a case in which it could possibly be concluded that Mrs Bailey would be a complete stranger to Uganda, however strong the ties that she has formed in the UK since coming to this country and overstaying her visa.

7. In light of the fact that the applicant in *Bailey* would not be "a complete stranger to Uganda" Andrews J found that "the main ground of challenge simply does not get off the ground, regardless of any further information relied on by the Secretary of State in relation to family members in Uganda." [16].

8. I consider that it is significant that the (non-exhaustive) "circumstances relevant to the assessment of whether a person has ties to the country of return" as set out in *Ogundimu* [125] closely link the circumstances of the appellant to the country of return. In other words, whilst a decision maker must look at all the circumstances in the round, for the purpose of satisfying the requirements of the Rule, it is the appellant's relation to the country of return which is of crucial importance rather than the strength of ties with family members and others within the United Kingdom or, indeed, the personal circumstances (for example, mental or physical health) of the particular appellant. In the present appeal, there is no escaping the fact that this appellant has spent the vast majority of her life living in Sri Lanka. She speaks one of the principal languages of the country and her siblings and possibly other relatives are still living there. The only factor which the judge identified and which led her to conclude that the appellant had no ties with Sri Lanka was the appellant's physical health and its consequences upon her ability to care for herself. In other words, had the judge found that the appellant was self-caring then, notwithstanding the fact that she may not have frequent contact with her siblings and other relatives, it simply could not have been asserted that she had no ties with Sri Lanka. I find that, whatever else it may entail, the application of the "no ties" rule must remain very firmly focused on an appellant's links with the people, institutions and culture of the country to which he or she will be returned. I do not accept that an appellant can cease to have ties with his or her own country of nationality simply on account of a medical condition or its consequences for the appellant either in the United Kingdom or in the country of return. To take an extreme example, a British citizen who was born and lived all his life in the United Kingdom but who falls into a coma cannot be said to have lost all ties to the United Kingdom as a consequence of his medical condition.

9. Mr Solomon, for the appellant, was right to submit that the assessment of the appellant's ties with Sri Lanka was for the judge to decide on the basis of the evidence. I find, however, that her analysis is flawed for the reasons I have given above. I accept that the judge found that the family have had some difficulty in employing appropriate carers for the appellant in Sri Lanka but I do not accept that those difficulties have, as the judge effectively found, severed all the appellant's ties with that country.

10. I set aside the determination of the First-tier Tribunal. I have re-made the decision. I canvassed with Mr Solomon and Mr Tufan the possibility of re-making the decision on the basis of the evidence already before the Tribunal and in the event I set aside the determination. Both agreed that there would be no need for a further hearing or additional submissions. Mr Solomon gave me a copy of his skeleton argument.

11. It follows from what I have said above that I find that the appellant is unable to satisfy the requirements of paragraph 276ADE. I find that she does not have "no ties" to Sri Lanka.

12. The question then arises as to whether I should proceed to determine the appeal on Article 8 ECHR grounds outside the Rules. It is the appellant's case that it would be

disproportionate for her to be removed to Sri Lanka where she would be unable to enjoy the care and assistance with "normal everyday tasks" such as dressing, bathing and cooking. I find that, whilst the family may have had difficulties obtaining professional care for her in Sri Lanka in the past, those difficulties do not persuade me that it would be difficult let alone impossible to obtain such care for the appellant should she return to Sri Lanka. What is clear is that the United Kingdom family would be prepared to pay for such care. The appellant's diagnosis of "joint pain", whilst it may cause her some problems with her daily life, is not by any definition a serious or debilitating illness. Furthermore, set against the appellant's wish to remain living in the United Kingdom with her family there remains the public interest concerned with her removal. The appellant entered on a visit visa which she has acquired by persuading the Entry Clearance Officer that she intended a temporary visit to the United Kingdom at the end of which she would return to Sri Lanka. Instead, she has applied to remain here permanently. The public interest concerned with the removal of individuals who behave in such a way is, in my view, a strong one. Further, there is nothing in the circumstances of this appellant which falls to be considered outside the provisions of the Immigration Rules (see *MF (Article 8 – new rules) Nigeria* [2012] UKUT 393 (IAC), *Gulshan (Article 8 – new rules – correct approach) Pakistan* [2013] UKUT 640 (IAC) and *Nagre R (on the application of) v Secretary of State for the Home Department* [2013] EWHC 720 (Admin)). The circumstances of the appellant (an elderly woman with minor health complaints who wishes to spend her retirement receiving care in the United Kingdom home of her children) are hardly unusual. Whilst returning to Sri Lanka may cause the appellant some hardship by comparison with the more comfortable life which she currently enjoys here in the United Kingdom, the consequences of returning her can hardly be described as unjustifiably harsh.

13. My primary finding is that the circumstances of this appellant do not justify the Tribunal considering the appeal on Article 8 ECHR grounds outside the Immigration Rules. Even if I am wrong in that finding, then I would conclude that the appellant's removal to Sri Lanka is not disproportionate when it is set against the public interest.

DECISION

14. The determination of the First-tier Tribunal promulgated on 10 March 2014 is set aside. I have re-made the decision. The appellant's appeal against the immigration decision dated 21 August 2013 is dismissed under the Immigration Rules. The appeal is dismissed on human rights grounds (Article 8 ECHR).

Signed Date 20 September 2014

Upper Tribunal Judge Clive Lane