Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/00133/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 28 May 2015	**On 12 June 2015**

Before

DEPUTY JUDGE DRABU CBE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS UDENI ANUSHA RUPASINGHE
ANONYMITY DIRECTION NOT MADE

Respondent

Representation:
For the Appellant: Mr Esen Tufan, Senior Presenting Officer
For the Respondent: Mr A Jafer of counsel instructed by Liyon Legal Ltd. solicitors.

DECISION AND REASONS

1. The appellant in this appeal before me is the Secretary of State for the Home Department. She appeals against the decision of Judge Parker, a Judge of the First Tier Tribunal who allowed the appeal of the respondent on Article 8 grounds, a national of Sri Lanka against the decision of the appellant before me directing the removal of the appellant as an illegal entrant following an application made by the respondent on 27 March 2013 for further leave to remain on grounds of long residence and under Article 8 of the ECHR.

2. Judge Parker heard the appeal on 4 November at Taylor House and her written reasons for allowing the appeal were promulgated in a determination dated 24 November 2014. It is worthy of note that at the hearing before Judge Parker no one appeared on behalf of the Secretary of State whilst the respondent was represented and gave oral evidence. However on 2 December 2014 the Secretary of State sought permission to appeal to the Upper Tribunal alleging that the decision made by Judge Parker was in material error of law on the grounds stated in the application for permission to appeal.

3. Judge McDade, a Judge of the First Tier gave permission to appeal on 15 January 2015. In her decision granting permission the Judge said that "The grounds of application for permission to appeal assert that the judge has failed to apply correctly or at all the provisions of paragraph 117B(5) of the Nationality, Immigration and Asylum Act 2002 and that it was an arguable error of law for the Tribunal to attach weight to the Appellant's former representative being at fault in the absence of evidence coming within the terms of **BT Nepal**. In an otherwise careful decision it is arguable that the judge had fallen into error in respect of these two issues. There is an arguable error of law."

4. I heard submissions from Mr Tufan and Mr Jafer. Mr Tufan amplified the grounds submitted with the application contending that Judge Parker had made material error in law in allowing the appeal under Article 8. The Judge had made no finding as per relevant case law that there are compelling or exceptional circumstances, which engaged the conditional rights under Article 8 on grounds of private and family life. It was his submission that there were no exceptional circumstances in the case. He took me to the judgment of the Court of Appeal in **SS [Congo] Paragraphs 21 and 25 of the decision [2015] EWCA Civ 440.** He also asked me to bear in mind headnote 4 and contents of paragraph 77 in the judgment of **AM (S117B) Malawi [2015] UKUT (IAC)** Mr Tufan argued that the Judge had also been wrong in law in giving weight to the appellant's assertion that she had been let down by her solicitor. In this regard he relied on the decision of the Immigration Appeal Tribunal in **BT**.

5. Mr Jafer took me through the determination consisting of 88 paragraphs and argued that the determination had taken full and proper account of all the relevant circumstances. He argued that the grounds upon which the Secretary of State had been granted permission to appeal were dressed up as points of law whereas in reality they were no more than disagreements with findings of fact properly and correctly made by Judge Parker.

6. Reminding me that the Judge granting permission had summarised the grounds as being two in number – the first being in relation to the application or proper application of paragraph 117B (5) and second being the weight attached to being let down by the legal representative contrary to the principles set out in the decision in BT, Mr Jafer argued that the first ground had no merit as the appeal was dismissed under Immigration Rules

and that in any event Appendix FM only applied to free standing applications made under Article 8. Mr Jafer argued that Judge Parker had taken great care in taking account of all the evidence adduced before her and the Judge had referred to and applied correctly and with care all the relevant case law to the facts of the case before her. He argued that the principle in the decision in BT was an obvious one based on Rules of Natural Justice but in this particular case the conduct of the respondent's solicitor had not been even mildly determinative of the appeal that the Judge had allowed. The Judge had heard evidence from the respondent to this effect and was entitled to find it credible. The Judge analysed the relevant evidence with care as is evident from the contents of paragraphs 22, 23, 24, 25, 26 and 40 of the determination. Mr Jafer said the conduct of the solicitor and its impact on the respondent was a factor that the Judge was entitled to take into account as a factor in the proportionality exercise. The ground of appeal based on **BT**, said M Jafer has no merit. I agree.

7. I find the same in respect of the other ground. The Judge has made clear and reasoned findings on compelling or exceptional circumstances before going on to determine the rights of the respondent under Article 8 of the ECHR. I found the determination in this appeal most comprehensive in the evaluation of all relevant facts and very impressive in setting out and applying all the relevant legal principles as set out in the case law as well as the Rules. The approach of the Judge to the appeal is faultless as can be seen from a full appraisal of all the relevant facts. The Judge has considered whether there would be "insurmountable obstacles" to family life continuing outside of the UK (paragraph 57) and quite properly concluded, for reasons given in paragraphs 57, 58 and 59, that there would be insurmountable obstacles for the family life to continue in Sri Lanka. The Judge, as can be seen from the contents of paragraphs 66 and 67 and 68 in which the Judge has cited the decisions in **MM (Lebanon) Nagre [2013] EWHC (Admin), Gulshan 2013 UKUT 640 (IAC)**, has correctly concluded in paragraph 68 that "there are exceptional circumstances in this case as the refusal decision would result in unjustifiably harsh consequences for the appellant and her partner such that refusal of the application would not be proportionate". I note that the Judge has referred to the principles set out in **Razgar [2004}, EB (Kosovo) [2008], Patel [2013] UKSC** and **Chikwamba [2008] UKHL 40.**

8. The appeal of the Secretary of State is dismissed, as I have found no material error of law in the decision of Judge Parker.

K Drabu CBE
Deputy Judge of the Upper Tribunal
Date: 8 June 2015