



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/10979/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 3<sup>rd</sup> August 2015

Determination Promulgated  
On 14<sup>th</sup> August 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR SITHAMPARANATHAN MANOHARAN  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms C Bexton (Counsel)  
For the Respondent: Mr N Bramble (HOPO)

**DETERMINATION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Miles promulgated on 27<sup>th</sup> January 2015, following a hearing at Richmond on 13<sup>th</sup> January 2015. In the determination, the judge dismissed the appeal of Sithamparanathan

Manoharan. The Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

### **The Appellant**

2. The Appellant is a male, a citizen of Sri Lanka, who was born on 17<sup>th</sup> June 1972. On 3<sup>rd</sup> October 2013, he applied for leave to remain in the UK on the basis of long residence. On 2<sup>nd</sup> February 2014, the Respondent rejected his application and made a removal decision on 17<sup>th</sup> February 2014.

### **The Appellant's Claim**

3. The Appellant's claim is that he has been in the UK for sixteen years, having come to the UK unlawfully in November 1998 and made an asylum claim, which was rejected by the Respondent Secretary of State, and subsequently dismissed by the Adjudicator on 26<sup>th</sup> October 2000. The Appellant, however, was not removed. He has remained physically present in the UK ever since. The Respondent now rejected the application on the basis that the Appellant was not in a relationship with a qualifying partner, was not the parent of a qualifying child, and that his application could not succeed under Appendix FM of the Immigration Rules. In terms of paragraph 276ADE of HC 395, he had been in the UK for less than twenty years. He had lived the majority of his life in Sri Lanka. He had not severed all ties to that country.

### **The Judge's Findings**

4. The judge observed that before him on the day of the hearing, it was conceded by the Appellant's Counsel that there was no claim under Appendix FM. There was a reference to Article 3 of the ECHR thereby suggesting that there was a claim based upon inhuman and degrading treatment or the risk of torture. In addition, however, there was evidence before the judge of the Appellant receiving treatment by way of injections for hepatitis C and for hepatitis B.
5. When the Appellant was cross-examined, he admitted that he did not inform the Home Office of his change of address "because he was scared of being sent back to Sri Lanka". (Paragraph 17). The judge concluded that he had accepted that he had avoided giving information to the Secretary of State "to try and avoid being detected and removed" (paragraph 26). He also held that the Appellant had come to the UK in 1978 aged 26 years and he still spoke the Tamil language (paragraph 20).
6. In applying the case law in **Ogundimu [2013] UKUT 00060**, the judge considered the meaning of the word "ties" in Rule 399A of the Immigration Rules and observed that this "involves there being a continued connection to life in that country" (paragraph 22). He held that the Appellant had not terminated his ties to Sri Lanka. He concluded that,

"In my judgment this case is finely balanced, but given that the burden of establishing that he has no ties rests on the Appellant, I am not satisfied, despite him having no contact with his immediate family members Sri Lanka period

(sic) that he has established, in accordance with the tests in Ogundimu, that he does not have any ties to Sri Lanka ... .." (paragraph 24).

The judge went on to say that the Appellant did speak the English language and that he did receive public funds for the provision of medical treatment and that he had never had leave to remain in the UK to establish his private life as he alleged (see paragraph 27). The appeal was dismissed.

### **Grounds of Application**

7. The grounds of application state that in finding that the Appellant had not shown that he had no ties to Sri Lanka, the judge overlooked material considerations, and did so also in coming to the conclusion that there would be no disproportionate interference with his Article 8 rights.
8. On 10<sup>th</sup> June 2015, permission to appeal was granted.
9. On 1<sup>st</sup> July 2015, a Rule 24 response was entered to the effect that the appeal amounts to no more than a disagreement with Judge Miles' findings in a detailed and lengthy determination.

### **Submissions**

10. At the hearing before me on 3<sup>rd</sup> August 2015, Ms Bexton, appearing on behalf of the Appellant, submitted that the Appellant's entire case was based upon his claim that he had now been in the UK for sixteen years and therefore should be granted leave to remain on a permanent basis. Yet, there was no reference to this period of stay in the UK at all when the judge carried out his assessment under the principles of Ogundimu at paragraph 22. This was a serious flaw. The only reference to the Appellant being in the UK for sixteen years was in relation to the fact that he had not in any way become integrated into United Kingdom culture (see paragraph 23).
11. Second, the judge had accepted the evidence of Mr Navaratnam, a British citizen, who had returned back to Jaffna in Sri Lanka, and had returned to confirm that the Appellant's family was no longer there for him to return to (see paragraph 16). Finally, no consideration is given to the fact that the Appellant has been giving medical care to a Mr Jagdev Singh Purewal (see his witness statement at pages 1V, 2V in the Appellant's evidence bundle). He had been suffering from kidney problems and had an operation and the Appellant had provided him with care services.
12. At this stage, Ms Bexton applied for permission to amend the Grounds of Appeal because at paragraph 6(b) there is an express reference, to the fact that the judge had in this case failed "to acknowledge the evidence relating to his care of and relationship with his friend, the witness who attended the hearing, Mr Navaratnam ...". This witness is wrongly referred to as Mr Navaratnam by the person who drafted the Grounds of Appeal, because it is not this person, but Mr Jagdev Singh Purewal, who was the person receiving such treatment.

13. I granted permission to amend the grounds. Ms Bexton submitted that Mr Purewal had undergone a kidney transplant and was very much reliant upon the Appellant. She asked that I set aside the decision and remit it back to the First-tier Tribunal.
14. For his part, Mr Bramble submitted that there were two Grounds of Appeal. First, as far as **Ogundimu** was concerned, the judge had properly addressed the issues in relation to the Appellant's "ties" with Sri Lanka. He was clear in stating (at paragraph 22) that,

"while 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 they would have to go ...".
15. Second, the judge then states (at paragraph 23) that the Appellant was clearly a mature adult aged 26 when he left Sri Lanka and that, "while he has been out of Sri Lanka now for sixteen years he still speaks the Tamil language ..." (paragraph 23). This was the clearest indication that the judge had properly factored in the Appellant's time in Sri Lanka and the time that he had spent here, together with his failure to integrate into the UK.
16. Third, it is in this context that the judge then summarises his conclusions (at paragraph 24) by stating that this case is "finely balanced" but that given that the burden of proof is upon the Appellant for establishing that he has no ties left in Sri Lanka, the judge was not satisfied that, "despite him having no contact with his immediate family and members Sri Lanka period (sic) that he has established, in accordance with the test in **Ogundimu**, that he does not have any ties to Sri Lanka ..." (paragraph 24).
17. That leaves the question of Mr Jagdev Singh Purewal, and the tendering of medical and care services to this individual. Mr Purewal, submitted Mr Bramble, was not in attendance at the hearing. He was not cross-examined. It is not clear that Article 8 submissions arose in the proper manner in relation to this particular witness. He asked me to dismiss the appeal.
18. In reply, Ms Bexton submitted that paragraph 22 was the place where the judge should have addressed the Appellant's continued residence for sixteen years in the UK because that was the paragraph where **Ogundimu** was expressly discussed and the primary consideration here, in a case based upon long residence, was the length of time that the Appellant had been in this country. Yet, there is no reference whatsoever to his time of sixteen years in this country. The determination was clearly flawed.
19. Second, the witness statement from Mr Purewal has not been considered at all. It might have had a bearing upon the hearing. It might not have. The judge could not overlook it. It had to be addressed. There was, after all, medical evidence (at page 8) with respect to this person in the bundle.

## No Error of Law

20. I am satisfied that the making of the decision by the judge does not involve the making of an error on a point of law (see Section 12(1) of TCEA) such that I should set aside the decision. Notwithstanding Ms Bexton's valiant efforts to persuade me otherwise, I find that, even though this determination could have been better crafted (and not least in terms of the grammar employed) (see paragraph 24), the fact is that the relevant considerations have been properly considered by the judge.
21. The claim was based upon long residence. The judge does consider the Appellant's length of time in the UK when he discusses **Ogundimu** (at paragraph 22) and expressly refers to the sixteen years in this country at paragraph 23. It does so in the context that the Appellant speaks the Tamil language "and there is no evidence before the Tribunal that he has become in any way integrated into the United Kingdom culture".
22. It is of course the case that the judge also noted here that, "I accept that he does not know where his parents and sister are and that they may well all be deceased. If they are not deceased I accept that he has had no contact with them" (paragraph 23). The judge in this respect could have taken the view that this fact establishes, on a balance of probabilities, that the Appellant does not have sufficient "ties" under Rule 39A of HC 395, with Sri Lanka. However, as the judge himself pointed out "this case is finely balanced" (see paragraph 24).
23. Finally, this leaves the question of the care services that the Appellant apparently provides to Mr Jagdev Singh Purewal. The latter, however, was not in attendance at the hearing. There was a witness statement and there was some medical evidence. However, this in itself would not have led to the judge concluding that the Appellant did not have sufficient ties with Sri Lanka.
24. The decision arrived at by the judge was open to him. Another judge may well have taken a different view. However, it is not possible to describe the decision as "perverse" or in any other way "irrational".

## Decision

25. There is no material error of law in the original judge's decision. The determination shall stand.
26. No anonymity order is made.

Signed

Dated

Deputy Upper Tribunal Judge Juss

12th August 2015