



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/22780/2014
IA/22781/2014
IA/22782/2014

THE IMMIGRATION ACTS

Heard at Field House
On 2 February 2015

Decision & Reasons Promulgated
On 4 February 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

MRS SHRINIKA DINITHRI EDIRISINGHE First Appellant
MR SURANJA SRINATH DEVAMULLAGE Second Appellant
MASTER SUHAN DULMITHA DEVAMULLAGE Third Appellant
(ANONYMITY DIRECTION NOT MADE)

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms Peterson of Counsel
For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Sri Lanka. The first appellant was born on 5 August 1980. The second appellant is her husband and the third appellant is their son who was born on 11 March 2009. The first appellant made a combined application for leave to remain as a Tier 4 (General) Student – Dependant, which application was

refused by the respondent on 9 May 2014 because she failed to meet the requirements of paragraph 245ZX(b). That was because her most recent grant of leave was as a Tier 4 (General) Dependent Partner. As she did not have, or was not last granted, leave in one of the appropriate categories set out in paragraph 245ZX(b) she failed to meet the requirements. The applications of her husband and child fell to be refused in line with the first appellant's application.

2. The appellants' appeals against the respondent's refusal were allowed by Judge Somal ("the Judge") in a determination promulgated on 11 August 2014. The grounds claimed, whilst being out of time, that the Judge's finding that the first appellant's Article 8 right to a private life was engaged by her continued studies in the UK amounted to an error of law and, further, that the Judge failed to have regard to a material consideration, that the first appellant's estimated date of delivery, would have passed by the time of the hearing.
3. Judge Saffer refused the respondent permission to appeal out of time. Given the explanation for the delay was that there was a shortage of resources, Judge Saffer declined to exercise his discretion to extend time on the basis that a decision in favour of the respondent would be that she could ignore all time limits despite vast resources at her disposal and thereby create an unworkable Tribunal system.
4. Upper Tribunal Judge Storey granted permission to appeal. He concurred with the grounds before him that it was not apparent that in deciding the timeliness issue, Judge Saffer had regard to the arguable merits of the case. Upper Tribunal Judge Storey found the grounds otherwise had arguable merit because the Judge's reasons for allowing the appellants' Article 8 appeal on private life grounds were arguably irrational. In considering that the first appellant's pregnancy justified a grant of a short period of lawful leave to remain, the Judge arguably erred in law.

Submissions on Error of Law

5. The advocates drew my attention to [6] of the judge's determination. The first appellant discovered she needed to return to Sri Lanka to apply to switch her visa status in January 2014. Her last period of leave expired on 11 April 2014 as a Tier 4 (General) Dependant Partner of a Tier 4 (General) Student. Travel arrangements were made for 5 April but due to complications with the pregnancy, she was advised not to travel at that time, which was four weeks prior to her delivery date. The second appellant's student visa expired on 11 April 2014. They decided the first appellant should apply instead of him extending his visa, as his classes ended in April 2014 and he only had a couple of subjects left on his three year ACCA course. The appellant had paid £2,500 for the college course for one year after she passed her IELTS on 28 March 2014.
6. Ms Peterson submitted that the judge did not err in considering the situation in the round under Article 8, bearing in mind she took other factors into account, in particular, that the first appellant would have lost money on the course and there would have been other family disruptions. But for the medical situation, the family

would not have found themselves in that situation which, as the judge found, was only for a short period.

Conclusion on Error of Law

7. I find the judge erred in failing to have regard to a material consideration at the date of the hearing, that is, the first appellant's date of delivery was in the past and that there was nothing to suggest the family were unable to return at that stage, other than a reluctance to do so because the course was almost at an end and fees had been paid. See **Patel [2013] UKSC 72** at [57]. As per Lord Carnwath, inter alia, "*The opportunity for a promising student to complete his course in this country, however desirable in general terms, is not in itself a right protected under Article 8.*"
8. The respondent has shown errors of law in the determination, such that the decision of the First-tier Tribunal should be set aside. I re-make the decision by dismissing the appeal.

Decision

9. Appeal dismissed

No anonymity direction is made.

Signed

Date 2 February 2015

Deputy Upper Tribunal Judge Peart