



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

Appeal Numbers: IA/24178/2014
IA/24179/2014
IA/24180/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 6th March 2015**

**Decision & Reasons Promulgated
On 15th April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

**MISS SARANIJA CHANDRASEGARAM (FIRST APPELLANT)
MISS SUKANJA CHANDRASEGARAM (SECOND APPELLANT)
MRS PALAKUNAWATHY CHANDRASEGARAM (THIRD APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Talacchi of Counsel
For the Respondent: Miss Vijiwala

DECISION AND REASONS

Introduction

1. The Appellants born respectively on 18th June 1997, 27th January 2001 and 6th December 1960 are all citizens of Sri Lanka and the first two Appellants are daughters of the third Appellant. The Appellants were represented by Mr Talacchi of Counsel. The Respondent was represented by Miss Vijiwala a Home Office Presenting Officer.

Substantive Issues under Appeal

2. The Appellants had made application to remain in the United Kingdom indefinitely as the spouse of a settled person together with her two children as dependants under the Immigration Rules. The applications had been refused by the Respondent on 9th May 2014. The Appellants had appealed that decision and the appeal was heard by Judge of the First-tier Tribunal Andrew sitting at Birmingham on 15th October 2014. He allowed the appeal.
3. The Respondent made application for permission to appeal on the basis that the judge had failed to consider an essential feature in the Appellants' case raised by the Respondent. Permission to appeal was granted by Judge Brunnen on 23rd November 2014. Directions were issued that the matter should come before the Upper Tribunal to firstly decide whether an error of law had been made or not.
4. The matter came before me at Field House on 23rd January 2015 and in a decision promulgated on 6th February 2015 I found a material error of law was made by the judge in this case for reasons set out within the decision and set aside the decision of the First-tier Tribunal. Directions were issued on 6th February 2015 and the matter comes before me to remake that decision in terms of the directions set.

The Proceedings - Introduction

5. As the parties were present I firstly explained to them the nature of the proceedings and the manner in which they would be conducted. I next examined the documents available to me in this case.
6. The Respondent's documents consist of:
 - immigration history;
 - those documents listed at folios A to C on the index sheet to the bundle;
 - refusal letter;
 - full copy refusal letter.
7. The Appellants' bundle consists of:

- initial bundle containing those documents listed at pages 1 to 48 on the index sheet;
 - new bundle dated 20th February 2015 containing those documents listed at pages 1 to 79 on the index sheet.
8. The adult Appellant was called to give evidence. She confirmed her name and address and confirmed her witness statement of 23rd July 2014 at page 3 of the original bundle was true and correct. She said that both her children were studying at school and college. She said they lived with them and were supported by herself and her husband. She said they had a four bedroom home. There was no questions in cross-examination.
 9. The Appellant's husband and Sponsor was next called and he also provided his name and address as on file. He confirmed his witness statement of 8th October 2014 was true. He said that he worked for Interplex as a machine operator in packaging doing ten to twelve hours per day or 55 to 60 hours per week earning £8 an hour. He said that he had started with Interplex on 2nd June 2014. The rent at their home was £700 monthly. He provided a history of his employment stating that he had worked between April 2011 and April 2012 at Interplex earning £22,498 in that year. In the tax year April 2012 to April 2013 he was employed at a newsagents earning £3,460. In the tax year April 2013 to April 2014 he said he had also worked at the newsagents and had earnings of £7,205 according to the HMRC records. From June 2014 onwards he said he had returned to work at Interplex and was earning £370 per week as a net income giving him a total I calculated of £18,500 annually. He said money from his employment went into his HSBC Bank. He said there were no up-to-date statements of pay as documents had been given to his solicitors some time ago. He confirmed there were no bank statements for the current period. He said the rent was paid in cash. He said he did not withdraw the rent all in one lump sum.
 10. I heard submissions on behalf of the Respondent who submitted that there was no evidence of his income.
 11. In submissions on behalf of the Appellants it was said that the benefit threshold was £246.36 weekly and that working tax credit and child tax credit could be put into the equation but it was accepted the Respondent said the shortfall on the HMRC records was over £130 weekly. It was submitted that on an average wage from Interplex of £319 a week there was a sufficiency of funds.
 12. At the conclusion of the hearing I reserved my decision to consider the documents and evidence submitted. I now provide that decision with my reasons.

Decision and Reasons

13. In this case the burden of proof lies on the Appellants and the standard of proof required for both immigration and human rights issues is a balance of probabilities. As the Appellants are within the country I am entitled to look at circumstances existing as at the date of hearing.

14. At the error of law hearing it became clear that there had been two issues raised by the Respondent in the full refusal letter. Firstly the Respondent did not accept that the Appellants could be maintained without recourse to public funds, given the lack of evidence relating to the Sponsor's earnings or income. Secondly the Respondent had raised concerns as to whether this was a genuine and subsisting marriage. As explained in the error of law decision, the Judge at the First-tier Tribunal had not dealt with, and seemingly was unaware of the issue of maintenance. He had however dealt with the question of whether this was a genuine marriage and had concluded for reasons provided that it was a genuine marriage. There was no error of law in that decision and that finding was preserved.
15. Accordingly I needed to consider the sole question of maintenance and accommodation raised by the Respondent under paragraph 287(iv) and (v). The concerns and points raised by the Respondent appear at pages 2 and 3 of the refusal letter dated 9th May 2014.
16. As indicated in the error of law decision it was clear the judge was unaware of this issue having not been supplied with the full refusal letter. It is less than clear why this was not drawn to his attention by either the Presenting Officer or the Appellants' Counsel. It was also not entirely clear whether the Appellants and their solicitors were aware of this issue. However as noted in that previous decision there was some indication from the Appellant's witness statement and some documents supplied within the Appellants' bundle to suggest that they may have been aware that maintenance and accommodation was an issue rather than simply the genuineness of the marriage. For example at paragraph 21 of the Appellant's witness statement she stated "The Home Office are clarifying about my husband's income. My husband is a British citizen and is earning £13,000 per month".
17. The Home Office in their refusal letter had noted that the amounts of money put by the Appellant on her application form did not match official documentation in the HMRC form. It was further noted that the bank statement supplied did not match official figures nor provided evidence of income, rent paid or child benefit paid.
18. Even if the Appellants and their solicitors were uncertain as to the issue of maintenance at an earlier stage they have now had a sufficiency of time in which that matter is clearly an issue and a sufficiency of time to produce documentation or explanation to demonstrate the question of accommodation and maintenance. Indeed a further Appellants' bundle was served on 20th February 2015 which I anticipated would clarify matters. However the position is less than clear and the documents within the fresh bundle do not put beyond doubt the concerns.
19. I deal with the documents that do appear within both Appellants' bundles bearing in mind the burden of proof lies with the Appellants.
20. The tenancy agreement at page 13 first bundle shows the family lived at 12 Cedar Terrace from 23rd October 2011 at a monthly rental income of £750. At the date of application in January 2014 the parties were at the same address. However page 8

first bundle shows the parties moved to their current address at 63 Dashwood Avenue in March 2014 at a rent of £950 per month. There is a fresh tenancy agreement for the same property dated 1st December 2014 at page 74 of the second bundle showing the rent paid reduced to £700 per month, consistent with the Appellant and Sponsor's oral evidence. As to why the rent on the same property had reduced by £250 per month in a short period remains unexplained. There has been no independent evidence provided such as standing orders from a bank statement or rent book. There is recorded on the new tenancy agreement a handwritten note stating that the Sponsor was previously sharing with another person, but now as he is not and he shares with his family alone the rent is reduced. Ordinarily one would have expected his rent to have been less if he was sharing previously. Accordingly that reversal of the norm seems a little unusual.

21. Turning to the Sponsor's income, again there is an incomplete picture presented. Essentially the Appellant has provided HMRC's letters concerning working and child tax credits in respect of his claimed income. However as the letters indicate the amounts given are based on estimated income provided by the Sponsor and therefore are not necessarily definitive.
22. In the tax year April 2011 to April 2012 the Sponsor claimed an income of £23,467 (page 51 second bundle). However when the Sponsor made a claim for tax credit it is clear he claimed a different level of income as noted by HMRC letter (page 68 second bundle). The Sponsor in oral evidence claimed in that year he was working for Interplex.
23. The second bundle contains wage slips at pages 1 to 16. Pages 1 to 3 are in fact wage slips for the Sponsor's adult son and have no relevance in this case. There is only one wage slip for April 2011 to April 2012 at page 8 of the second bundle, that being for June 2011 showing the Sponsor working at Interplex with a net weekly income of £402.35 (gross £524), which would not be inconsistent with an income of about £23,467 if he worked throughout that tax year.
24. In the tax year April 2012 to April 2013 the Sponsor claimed he worked at a newsagents. The tax credit letter discloses his claimed income as being £3,460 (page 65 second bundle) and (a P60 at page 15 second bundle). In the tax year 2013 to 2014 the Sponsor claimed to be working at the newsagents and earning £7,205 per annum. His HMRC form at page 16 second bundle shows that income.
25. In the tax year 2013 to 2014 the Sponsor claimed to have begun work again with Interplex in June 2014. There are pay statements at pages 4 to 6 and 12 of the second bundle showing payslips for July to November 2014. There is further an employee printout at page 14 second bundle showing his details and start date of work as being 2nd June 2014 with Interplex. It also refers to payment of his income by BACS.
26. Bank statements appear at pages 17 to 48 of the second bundle. Again for unknown reasons the Sponsor's adult son's bank statements have been included at pages 17 to 27. They have no relevance. Joint bank statements of the Sponsor and Appellant

appear at pages 28 to 48. However the latest bank statement is dated 30th May 2014. Further the address given on the bank statements is for 274 Desborough Road, at a time when the Sponsor was allegedly living at 63 Dashwood Avenue and with a prior address at 12 Cedar Terrace. That same address of 274 Desborough Road appears on the address of the Sponsor's adult son on his bank statements. That same address also appears as the Sponsor's address on the P60 for April 2013 (page 15 second bundle) at a time when he was meant to be at 12 Cedar Terrace. The only clue to this inconsistency is a single sheet bank statement dated November 2011 (page 32 first bundle) showing that address. I have on balance therefore inferred that the Appellant and Sponsor lived at that address in Desborough Road prior to 12 Cedar Avenue and their adult son may continue to live at that former address and they have simply not, up to May 2014, notified the bank of any address changes.

27. None of the bank statements show any earned income paid in. Although the Interplex income is paid by BACS the bank statements stop in May 2014 prior to the start of employment there in June 2014. The Sponsor claims his employment continues.
28. I have considered this case with care given the gaps in the evidence submitted and the poor manner in which documentary evidence has been put together. That may not be the Sponsor's fault. The absence of recent bank statements and payslips is the major concern. However having observed the Sponsor I can understand if his legal representatives did not direct him to produce such evidence he may not independently have appreciated the need so to do.
29. His employment at Interplex in the six weeks for which payslips have been provided demonstrates a net income of £1,957. Accordingly if replicated over a full year that produces a net income of over £16,000. The Presenting Officer conceded if the Sponsor earned £13,000 per annum then that was sufficient to meet the requirements of paragraph 287(v).
30. The Sponsor has indicated his employment continues. There is no evidence contrary to that assertion. There is clear evidence of his employment beginning at Interplex in June 2014 and continuing until at least November 2014. There is a consistency in claims made as to approximate incomes in previous years. It is also the case that he had worked at Interplex previously. Although the presentation of the Appellants' bundle is poor and missing up-to-date information I have concluded that this may not necessarily be the Sponsor's fault. I have also found on balance just, that the Sponsor's account of his employment is credible.
31. I find therefore on balance having carefully examined all the documentary and oral evidence that whilst there are concerns and gaps as identified above on balance there is just a sufficiency of evidence to show the Appellants can be accommodated and maintained in accordance with paragraph 287 of the Immigration Rules and therefore fulfils the requirement of the sole remaining issue live under paragraph 287.

32. I would further add for the sake of completeness that if the Appellants fail to meet the requirements of the Immigration Rules this is a case that would require a second stage examination under Article 8 of the ECHR outside of the Rules. As I have indicated above, after a careful examination and reasoning of the evidence the First-tier Tribunal Judge had concluded that this was a genuine and subsisting marriage in which there are two young children.
33. The Sponsor, I am told and there is no evidence to the contrary, has been living in the UK for a not insubstantial period of time and is now a British citizen. If one was to contemplate the removal of the Appellants to Sri Lanka that would contemplate the breakup of a genuine marriage and the break in the relationship between the children as the Sponsor who has a genuine parental relationship with them. Under ordinary circumstances a central issue therefore would be whether it would be reasonable or not to expect the Sponsor himself to relocate to Sri Lanka notwithstanding his British citizenship in order to maintain the family bond.
34. The unusual circumstance in this case that requires a consideration of factors outside of the Rules is that the Sponsor was granted refugee status in the UK. That on the face of it means an acceptance by the Home Office that if the Sponsor returned to Sri Lanka there would be a real likelihood of persecution or treatment contrary to Article 3. The Respondent has produced no evidence to demonstrate that the Sponsor's personal circumstances giving rise to his refugee status have altered and in the absence of any evidence it would be wrong for me to assume that it would be safe for the Sponsor to return.
35. Accordingly when looking at any proposed removal of the Appellants in particular the children, the impact upon them of being separated from their father in circumstances where it would not be reasonable to expect him to accompany them to Sri Lanka is a not insignificant factor when having regard to all the statutory features that need to be considered under Section 117 of the 2002 Act and when looking at all features of that section in an assessment of proportionality under the fifth stage test of **Razgar** as indicated in the recent case of **Dube [2015]**. Indeed in the refusal letter of 9th May 2014 whilst the Home Office have properly had due regard to Section 55 of the Borders Act in terms of the question of proportionality their decision appears to have been based on the fact that the Sponsor could himself return to Sri Lanka and continue family life there. As I have indicated above given the Sponsor has been granted refugee status, in the absence of any contrary evidence I must work on the basis that that course of action is not necessarily reasonably open to him.
36. In summary therefore if I had found this application failing under paragraph 287 on the issue of maintenance there are those exceptional features that would properly have required an examination outside of the Rules under Article 8 and having examined all of the competing features, for the reasons provided above, I would have concluded that a removal of the Appellants would have been disproportionate.

Notice of Decision

I allow this appeal under the Immigration Rules.

No anonymity direction is made.

Signed

Date **13th April 2015**

Deputy Upper Tribunal Judge Lever

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid or may be payable .

Signed

Date **13th April 2015**

Deputy Upper Tribunal Judge Lever