Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/35428/2014**

THE IMMIGRATION ACTS

Heard at North Shields	**Determination Promulgated**
On 8 April 2015	**On 21 April 2015**
Prepared on 8 April 2015	

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

KALUGALA CHARITH SHEHAN PEIRIS
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Rogers, Solicitor, Immigration Advice Centre Limited
For the Respondent: Ms Rackstraw, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Sri Lanka who applied on 3 April 2014 for a variation of his leave to remain in the UK on the basis of his marriage to a British citizen, and the relationships formed as a result with her, and her children.

2. The application was refused on 21 August 2014 and in consequence a decision to remove the Appellant to Sri Lanka was made by reference to s47 of the 2006 Act. The Appellant duly

lodged an appeal against those immigration decisions, and his appeal was heard on 18 November 2014, and allowed under both the Immigration Rules, and on Article 8 grounds, in a decision promulgated on 4 December 2014 by First Tier Tribunal Judge Hillis.

3. By a decision of First Tier Tribunal Judge Ransley dated 28 January 2015 the First Tier Tribunal granted the Respondent permission to appeal on the basis it was arguable the Judge had erred in his approach to the Article 8 appeal, and to paragraph EX.1.

4. The Appellant filed a Rule 24 response to the grant of permission on 15 January 2015 in which she argued that there was no material error of law. Although the decision was not free from errors, it could, and should be read as a whole, and showed that the Judge had been satisfied that the requirements of paragraph EX.1 were satisfied. That being the case, the errors in his approach to the Article 8 appeal outside the Immigration Rules were immaterial.

5. Neither party sought permission to introduce further evidence. Thus the matter comes before me.

Paragraph EX.1

6. The Respondent did not take issue with the validity of the marriage between the Appellant and the sponsor in either the refusal of his application, or at the hearing of the appeal.

7. The sponsor has three children, aged at the date of hearing 21, 18, and 6. The decision refers to only the youngest, although the application referred to both the 18 year old and the 6 year old because they were then both in full time education and living as members of the household of the Appellant and the sponsor. Whilst the position of only the 6 year old would be relevant under a consideration of paragraph EX.1, the position of the elder children would be relevant to any consideration of the Article 8 appeal outside the Immigration Rules.

8. Before me the Respondent accepts that the decision should be read as including a finding that the Appellant had a genuine and subsisting parental relationship with the youngest child, a British citizen aged under 18. There is no explicit finding in those terms, but read as a whole that must be what the Judge's conclusion was. Moreover there was evidence that would allow him to make it, and there is no assertion in the grounds that any such finding was perverse or irrational. Boiled down, the Respondent's challenge to this finding is no more than a disagreement with it.

9. Equally the Respondent accepts that the decision must be read as to include a finding that it would not be reasonable to expect this child to leave the UK at the date of the hearing, even though the Judge did not express himself in those terms. The Judge noted that the child was the subject of disputed Family Court proceedings between her parents, and that the sponsor was currently prevented from removing her from the UK. That situation would endure until the Family Court proceedings were concluded. In the circumstances, it is difficult to see how she could reasonably be expected to leave the UK at the date of the hearing. Ms Rackstraw's argument that she might be able to do so in the future was not material to the requirements of paragraph EX.1.

Article 8

10. In the circumstances the criticisms of the manner in which the Judge addressed either the issues arising pursuant to s55, or, the Article 8 appeals, simply fall away as immaterial.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 4 December 2014 did not involve the making of an error of law in the decision to allow the appeal under the Immigration Rules that requires that decision to be set aside and remade, and that decision is accordingly confirmed.

Deputy Upper Tribunal Judge JM Holmes
Dated 8 April 2015