



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

Appeal Number: IA/37970/2014

THE IMMIGRATION ACTS

Heard at Field House
On 17 September 2015

Decision & Reasons Promulgated
On 24 September 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

Mrs OPHELIA PRIYANTHI JENOLUCKSHAN

Respondent

Representation:

For the Appellant: Mr I Jarvis, Senior Home Office Presenting Officer

For the Respondent: Ms A Nizami (counsel) instructed by Rasiah & Co, solicitors

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Suffield-Thompson, promulgated on 2 March 2015.

Background

3 The appellant is a Sri Lankan national, born on 14 July 1992. On 6 August 2014, the appellant applied for leave to remain as the partner of a person present and settled in the UK.

4 On 19 September 2014, the respondent refused the appellant's application and decided that the appellant should be removed from the UK by way of directions under Section 47 of the 2006 Act.

The Judge's Decision

5 The appellant appealed to the First Tier Tribunal. First Tier Tribunal Judge Suffield-Thompson ("the judge") allowed the appellant's appeal both under the Immigration Rules and on Article 8 ECHR grounds.

6 Grounds of appeal were lodged and on 5 May 2015, First Tier Tribunal Judge Levin granted permission to appeal, stating *inter alia*:

"... both the grounds and the decision disclose arguable errors of law".

7 Ms A Nizami, Counsel for the appellant asked to address me first, even though this is the respondent's appeal. Ms Nizami told me that she had had discussions with Mr Jarvis, for the respondent, and accepted that the decision contained material errors in law and asked that the case be remitted to the First Tier Tribunal for a full hearing.

8 Mr Jarvis adopted the terms of the grounds of appeal and told me that there were inadequate findings in fact which have deprived the appellant of a fair hearing. For that reason, he asked that the case be remitted to the First Tier Tribunal to be heard of new.

Analysis

9 Between [23] and [28], the judge considered the appellant's case but it is not clear from the contents of [23] to [28] whether the judge finds that either family life or private life exists for this appellant in the UK. It is not clear if the judge was considering the terms of Paragraph 276ADE or the terms of Appendix FM.

10 [23] and [26] are little more than a summary of submissions that were made to the judge. In [27], the judge finds that the appellant fulfils the requirements of Appendix FM, paragraph EX.1, but the judge does not set out adequate findings in fact to demonstrate how she arrives at that conclusion.

11 At [28], the judge appears to pursue the five stage test set out in Razgar but does not set out findings in fact to support the judge's conclusions on proportionality.

12 In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that

(i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision.

(ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

Conclusion

13 I find that the judge's decision is tainted by material errors of law. The Judge's decision cannot stand and must be set aside in its entirety. All matters to be redetermined afresh.

14. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

15. In this case I have determined that the case should be remitted because both parties' representatives agree that the Appellant did not have a fair hearing. In this case none of the findings of fact are to stand and the matter will be a complete re hearing.

16. I consequently remit the matter back to the First-tier Tribunal to be heard before any First-tier judge other than First-tier Tribunal Judge Suffield-Thompson.

Signed

Date 23 September 2015

Deputy Upper Tribunal Judge Doyle