



IAC-FH-CK-V1

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

Appeal Number: AA/05503/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22 January 2016**

**Decision & Reasons Promulgated  
On 29 January 2016**

**Before**

**UPPER TRIBUNAL JUDGE SMITH**

**Between**

**MR PRATHEEPAN JEYAPALAN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Harris, Dotcom Solicitors Limited

For the Respondent: Mr S Kotas, Home Office Presenting Officer

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

I find that no particular issues arise on the facts of this case that give rise to the need for a direction. For this reason no anonymity direction is made.

**DECISION AND REASONS**

1. The Appellant appeals the decision of First-tier Tribunal Judge Shiner promulgated on 15 October 2015 ("the Decision"). Permission to appeal

was granted by First-tier Tribunal Judge Zucker on the Article 8 ground only on 5 November 2015.

2. The Judge in dismissing the appeal on this ground relied on three factors. Those were that the Appellant's children although potentially entitled to British citizenship had not yet been granted citizenship, the Respondent had unreasonably delayed in the consideration of the Appellant's case and the Appellant's mental health.
3. Mr Harris, who appeared for the Appellant before me, pressed only the first of those factors although he did indicate at one point in his submissions that the delay may be relevant. However, before turning to that factor I will deal with the second and third factors.
4. The Judge noted the delay in dealing with the Appellant's application but at [96] of the Decision, having found that there was some unreasonable delay on behalf of the Respondent, indicated that she had taken that delay into account. This is sufficient to deal with that point.
5. In relation to the Appellant's mental health, that is dealt with separately at [78] onwards of the Decision, as it was raised initially in relation to Article 3 claim. At [91] the Judge indicated that the Appellant's mental health condition was taken into account also within the context of his other Article 8 claims.
6. There is a complaint that the various factors were not considered cumulatively. That challenge is without foundation. The Judge has clearly considered all the factors on which the Article 8 claim is based as a whole.
7. I turn therefore to the first factor, which, as I say, was the focus of submissions before me. The Appellant says that his children are automatically entitled to British nationality because their mother had indefinite leave to remain at the time of their birth. That certainly appears to be right under Section 1 of the British Nationality Act 1981. However, the Judge is required to consider the facts as they stood at the time of the hearing, and the only real complaint which, it seems to me, the Appellant can make about the way in which this issue was treated (bearing in mind that the children had not acquired citizenship at the date of the hearing) is at [98] where the Judge says: "I accept that the children are dependent upon the appellant and his partner, however I do not accept that the children are British citizens or that it is inevitable that they will obtain British citizen status, it may not be so."
8. As I pointed out to Mr Harris, however, the Judge then went on to consider Article 8 outside the Rules. Indeed Mr Harris did not suggest even now that the Appellant could meet the Rules as the children are not yet British citizens. The judge there considered the best interests of the children and in that context says at [105]: "They are not British citizens." That was and is of course entirely factually correct. The Judge has considered the best interests of the children therefore on the right factual basis.

9. Having made that finding in relation to best interests the Judge goes on to consider whether it is reasonable for the Appellant's partner to return to Sri Lanka, as I repeat again, on the basis of the factual finding that the children were not at the date of the hearing British citizens. He found that it is not unreasonable for the partner and children to return to Sri Lanka with the Appellant.
10. Insofar as there is an error therefore at [98] in the finding that it is not inevitable that when the application is considered the children will be granted citizenship (all things being equal, as Mr Kotas put it to me), this error is not material. Accordingly I uphold the decision of the First-tier Tribunal.
11. I make clear of course that if matters change, in particular as and when the children are granted citizenship, it will be open to the Appellant to make a further application to deal with the facts as they will then stand.

**Decision**

I am satisfied that the Decision does not involve the making of a material error of law and I therefore uphold the First-Tier Tribunal Decision.

Signed



Date 28 January 2016

Upper Tribunal Judge Smith