



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/07671/2014**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated
On 20 May 2016**

**Resumed Hearing
On 26 April 2016**

Before

DEPUTY JUDGE of the UPPER TRIBUNAL Ms G A BLACK

Between

**MRS ST
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Decision & reasons following resumed hearing

Representation:

For the Appellant: Ms B Jones (Counsel instructed by Tamil Welfare Association)

For the Respondent: Miss Fijiwala (Home Office Presenting Officer)

DECISION AND REASONS

1. This is a resumed hearing following a decision and reasons promulgated on 26 February 2016 in which I found an error of law by the First-tier Tribunal and set aside the decision. Directions were made for oral submissions on all issues relevant to Article 8 and Article 3 and for the production of any further medical evidence as necessary and for evidence as to suitability of accommodation in a care home in Sri Lanka.

2. At the resumed hearing the appellant's representative produced a skeleton argument and a psychiatric report prepared by Dr G C Fox, Home Office guidance re medical evidence, case study: Sri Lanka, letters of appointment at Whipps Cross Hospital, **GJ and Others (Post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC), PP (Sri Lanka) v SSHD [2014] EWCA Civ 1828.** The respondent's representative produced three information sheets on care homes in Sri Lanka and relied on **Rajendran (Section 117B - family life) [2006] UKUT 138 IAC.**

Issues

3. The background facts are not disputed. The details are set out in the decision and reasons promulgated on 26 February 2006 on which I rely. The issues to be considered were Article 3/humanitarian protection and Article 8/family life. I proceed on the basis that the appellant has no close family members able to care for her in Sri Lanka, and that she has chronic physical and mental health needs.

Submissions

4. The respondent relied on evidence showing the availability of care homes for the elderly and for those suffering with dementia in Sri Lanka arguing that Articles 3, Article 8 rules, paragraph 276ADE are not met and Article 8 outside of the Rules is not engaged. The factors listed in Section 117B are of relevance and reliance placed on the recent Upper Tribunal decision of **Rajendran.** It was submitted that the factors in **PP (Sri Lanka)** (paragraph 14) did not apply to this appellant. The medical evidence did not support any claimed suicide risk.
5. Ms Jones relies on her skeleton argument. She submits that such care whilst being available does not meet the appellant's specific requirements. The appellant is at risk as a lone female in **PP,** and her particular physical and mental health needs are such that Articles 3 and/or 8 apply.

Discussion and Decision

6. I accept Ms Jones' submission that the appellant's circumstances must be considered in the context of risk on return following **PP (Sri Lanka).** In so doing it is necessary to consider the evidence as to the appellant's vulnerabilities. I find that she is an elderly woman with multiple health difficulties and moderate cognitive impairment due to depression and/or age related dementia. She is receiving treatment for type 2 diabetes, hypertension and respiratory difficulties. I accept the conclusion reached by consultant psychiatric Dr S Dhumad in his report dated 25 October 2015 and which is unchallenged by the respondent. Dr Dhumad considered risk of suicide and found a moderate risk but rising to be a significant risk in the event of a deportation to Sri Lanka. She would be at risk of isolation and loneliness in Sri Lanka leading to a significant deterioration in her mental health, increasing her vulnerability and her risk of committing suicide. Dr Dhumad found the appellant was unfit to attend the court hearing or give oral evidence. He stated, "She is

depressed, hopeless and cognitively impaired; her concentration is poor and is likely to be worse if she were to be cross-examined". He concluded that she is:

"A very vulnerable elderly lady with serious mental social and physical health needs. She is not currently treated for depression or properly investigated for dementia: therefore prognosis depends on her response to treatment and the outcome of the dementia diagnosis. In my opinion the prognosis would be good when she receives the appropriate treatment and maintains the psychological and social support by her children; on the other hand the prognosis will be very poor if she were to be deported to Sri Lanka or India."

7. Dr Dhumad agreed with the independent social worker Mr Horrocks as to the level of care required by the appellant and concluded that "support from her children is essential and exceptional to promote and aid her recovery from her current mental and physical ill health".

8. I further place weight on the unchallenged report of Mr P Horrocks who concluded that the appellant required support with all aspects of her daily living, aspects of her personal care and that she was unable to leave the house alone. He found that there had been a deterioration in her health and functioning since her arrival in the UK. Mr Horrocks further expressed the view that:

"Given the difficulties caused by her practical care needs, this will in all likelihood be the least of her problems given the problems and risks she will face in terms of her most basic care needs and the impact this will have on her deteriorating physical health",

9. A more recent report dated 18 April 2016 by Dr G C Fox, consultant psychiatrist specialising in old age and adult psychiatry, summarised the appellant's care needs at paragraph 3.1.1.1. I accept and place weight on this expert evidence. Dr Fox was of the view that the appellant's memory had deteriorated since the assessments made by Mr Horrocks and Mr Dhumad. He diagnosed that she was suffering from vascular dementia with evidence of depressive symptomology. He found that she was increasingly dependent and at risk of becoming increasingly frail in the near future. Whilst having difficulty in recalling events she was nevertheless frightened to return to Sri Lanka. This together with the diminishing recollection of separation, were at the present time still contributing factors to her emotional needs. Crucially Dr Fox formed the view that the added stress associated with a return to Sri Lanka would be likely to cause a deterioration in her cognitive state and her dementia. He also pointed out the risk of abuse and neglect if she were to be placed in a care home without family supervision. He stated that entry into a care home would shorten her lifespan and precipitate a significant deterioration in her mental health.

10. Having considered all of the evidence in the round I am entirely satisfied that the appellant is a highly vulnerable elderly woman. I have considered

her characteristics in the light of the UNHC guidance and **PP** and conclude that she:

- (1) is of Tamil ethnicity;
- (2) originates from Jaffna in the Northern Province;
- (3) is a widow;
- (4) will be living alone as a lone female head of her household in the militarised zone;
- (5) will be in a weak economic position given her level of education and multiple health problems; and
- (6) is highly vulnerable by reason of her age and characteristics (1) to (4) above.

I also take into account that prior to residence in the UK the appellant lived in India and had in fact only resided in Sri Lanka for a few years. She is not very familiar with the country and her deteriorated health will impact on her ability to reintegrate. I also concur with the Ms Jones' submission that the analysis under **PP** must start from the position that the appellant would be returning to her home area where she would be at risk as a lone elderly woman. I also accept that she cannot be excluded from the risk of sexual harassment or abuse notwithstanding her age.

11. It is conceded that there is suitable care available in Sri Lanka for the elderly and those suffering from dementia. However it was submitted by Ms Jones that none of the material provided explicitly stated that they would accept and be able to treat persons who also have serious mental health problems. Further she submitted that in the absence of friends and family available in Sri Lanka to monitor the care provided to the appellant, it was not reasonable and/or would be unduly harsh to expect her to return to a care home. I agree with those submissions. Furthermore I accept that institutional care would not reach the emotional needs of the appellant in being surrounded by her family members. The expert evidence showed she was in danger emotionally and mentally of a further deterioration. In the light of the appellant's particular needs I find no evidence to show that those needs would be met by suitable and available care in Sri Lanka.
12. As to suicide risk I am not satisfied that the evidence meets the high test set out in **J v SSHD [2005] EWCA Civ 629** and **Y (Sri Lanka) v SSHD [2009] EWCA Civ 362**, so as to engage obligations under Article 3 ECHR.
13. I now consider paragraph 276ADE and I am satisfied that there are significant obstacles to the appellant's integration into the country to which she would have to go if required to leave the UK. I rely on the expert medical and social worker evidence and place weight on the appellant's significant level of vulnerability given her mental health disorder, physical illness and recently diagnosed dementia. The appellant

would either be returning to her home area where in my view she would be considerably at risk because of her vulnerabilities or she would be living in a care home for which there is no clear evidence that all of her needs and medical treatment needs would be met. In view of the appellant's deteriorating mental and physical health where her emotional needs are closely connected to her mental health, there would be significant obstacles to her integration into Sri Lanka. Further and of significance is the fact, emphasised by Dr Fox, of her failing memory of Sri Lanka but that one factor still present is the level of fear associated with Sri Lanka. I conclude that this is a case where a return of the appellant to Sri Lanka where she has no established long-term past residence and no existing family support, meets the requirements of the Immigration Rules in terms of significant obstacles test.

14. In the alternative, I conclude that Article 8 outside of the Rules is engaged. There are compelling circumstances justifying consideration of this appeal outside of the Rules. Specifically they are the appellant's high level of vulnerability and her recent diagnosis of dementia. The **Razgar** steps are applicable.
15. It was accepted by the First-tier Tribunal that family life was established. Ms Fijiwala relies on **Rajendran** arguing that little weight should be placed on family life established during precarious circumstances in the UK. Following that principle I accept that some consideration must be given to the Article 8 jurisprudence as to what weight is to be attached to any family life where it is established in precarious circumstances and/or during unlawful residence in the UK.
16. The family life involves elements of dependency beyond the normal emotional ties between adult relatives (**Kugathas v SSHD [2003] EWCA Civ 31**). The appellant relies on her daughter for meal preparation, personal care, provision of medication and healthcare and mobilisation.
17. I find that there would be an interference with family and private life were the appellant to be removed to Sri Lanka. She would be without practical and emotional links with family members. For someone in the appellant's circumstances she would not be able to rely on "modern methods of communication". It is accepted that such interference would be unlawful and in accordance with the maintenance of immigration control. In terms of proportionality I am satisfied that not only would the appellant's Article 8 rights be affected but also those of her children and grandchildren. The negative impact of her removal on the emotional wellbeing of the entire extended family and in particular her children is a relevant consideration in the proportionality balancing exercise, as acknowledged by Mr Horrocks in his report. I have also been guided by the approach in **Dasgupta (error of law- proportionality- correct approach)[2016] UKUT 00028(IAC)**.
18. In terms of public interest factors I consider Section 117A and 117B of the 2002 Act (as amended). It is accepted that the appellant does not speak English and her family provides financially for all of her care needs. I accept that she does receive medical treatment on the NHS bringing her

within Section 117B(2) and (3). However, she has never been in the UK unlawfully and claimed asylum within the currency of her visitor's visa. Whilst following the principle in **Rajendran** it is fair to say that the appellant has established her family and private life during a time when her circumstances were precarious in the UK. However, her mental health had not deteriorated or been diagnosed to the extent that it has been as at the date of hearing before me and there are factors such as the appellant's age, physical and mental ill health, that need to be balanced in this context. I have considered these factors and the appellant's circumstances given that she as a very elderly sick person living with her immediate family and being cared for and financially supported by them at this stage of her life. Those factors in my view allow the private interests of the appellant and her family members to outweigh any public interest in immigration control justifying the need for the return of the appellant to Sri Lanka given the foreseeable significant consequences of removal to her mental, physical and emotional health.

Notice of Decision

I allow the appeal.

Anonymity direction is made._

Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings

Signed

Date 13.5.2016

Deputy Upper Tribunal Judge G A Black

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 no fee award as a hearing was necessary.

Signed

Date 13.5.2016

Deputy Upper Tribunal Judge G A Black