



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

**Appeal Number: IA/07145/2015**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13 January 2016**

**Decision and Reasons Promulgated  
On 2 February 2016**

**Before**

**DEPUTY JUDGE DRABU CBE**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**And**

**MR WAWALA AKIKARAMGE DINENDRA ANAWARATNE**

Respondent

**Representation:**

For the Appellant: Mr P Duffy, Senior Presenting Officer  
For the Respondent: Mr Z Nasim of Counsel instructed by Chris Raja, Solicitors.

**DECISION AND REASONS**

1. This appeal has been brought by the Secretary of State (referred to as the appellant in this determination) against the decision of the First Tier Tribunal Judge Lal who following a hearing of the appeal at Richmond on 14 July 2015 allowed the appeal of the respondent, a national of Sri Lanka against the appellant's decision of 15 February 2015 refusing him leave to remain on human rights ground.
2. It is worthy of note that the Secretary of State was not represented before the First Tier Tribunal. The same Counsel who appeared before me represented the appellant. Judge Lal

heard oral evidence from the respondent and two witnesses who supported his appeal. Judge Lal said in Paragraph 13 of his determination that he “accepts the Appellant and his witnesses to be credible and the chronology is not in dispute.” He then states his findings of facts and his reasons for the conclusion he reached allowing the appeal.

3. The Secretary of State (appellant in these proceedings ) sought permission to appeal against the decision of Judge asserting that the Judge had given weight to immaterial matters, he had failed to give adequate reasons on material matters - Circumstances in Sri Lanka and lastly that the Judge had failed to give adequate reasons on material matters – Article 8.
4. Judge Colyer, a Judge of the First Tier Tribunal gave permission to appeal for the reasons given in his decision of 28 October 2015. After reciting the three grounds upon which the appellant was seeking permission to appeal, Judge Colyer, somewhat unhelpfully states in the last paragraph of his decision, “It is arguable the judge misdirected himself for the above reasons and the grounds submitted by the respondent are arguable. Permission to appeal to the Upper Tribunal is granted.” Although the decision granting permission to appeal fails to address the criteria for grant in that it neither addresses itself to what error of law stated in the grounds he found to be arguable as establishing a material error of law nor does it give any sound reasons for grant of permission. However Mr Naseem did not address this point in his submissions before me.
5. It is also interesting that the appellant states in her grounds of appeal that the Judge has erred in not considering the decision in *Bensaid v UK* [2001] ECHR 82. Having herself been absent from the hearing, it is somewhat ingenious to be critical of the Judge for not having considered something that he could not be expected to consider as in any event the decision had limited value to the facts of the case before him. In the appellant’s letter of 3 February 2015 giving reasons for the decision to refuse and consisting of ten pages, the appellant has made no mention of the decision in *Bensaid* but has referred to a number of decisions which she thought assisted her in the decision to refuse the application. Judge Colyer mentions the case of *Bensaid* but does not state how the ratio decidendi could have arguably made a material difference to the outcome of the appeal.
6. At the hearing before me I heard submissions from Mr Duffy and Mr Nasim. Mr Duffy said that although he relied on the grounds of appeal that enabled him to come before the Upper Tribunal, there was only one reason that he wished to focus on – that being that the decision of the Judge was inadequately reasoned. Mr Duffy argued that the Judge had paid no regard to the Secretary of State’s guidance on family or private life, drawing my particular attention to paragraph 18. He submitted that by failing to address what would happen if he were allowed to stay in the UK as far as reliance on public funds for the treatment was concerned, the Judge had made a material error of law. He argued that the conclusion of the Judge did not demonstrate that he had carried out a balancing exercise between the rights of the appellant and those of the public at large. He conceded that if he had done so the outcome could have been the same but it could equally have gone the other way.
7. Mr Nasim drew my attention to absence of representation from the Secretary of State at the First Tier Tribunal hearing. He also pointed out that none of the assertions made in the grounds of appeal to the Upper Tribunal had the appellant challenged or cast doubts on the clear and positive credibility findings made by Judge Lal. He went on to submit that neither the written grounds of appeal nor the oral submissions made by her representative at the hearing even remotely established a material error of law in the decision made by Judge Lal.

The Judge, in his view had appraised all the relevant evidence and had given weight to all the elements in the evidence within the limits permitted in law. Mr Nasim drew attention to pages 39, 40, 44 and 45 of the report from Ms Noble, which the Judge had carefully and meticulously appraised in paragraphs 13 and 14 of his determination. He argued that the Judge had been perfectly correct in law in the findings of fact that he made. The Judge mentions the evidence of Dr Simon Eccles in paragraph 20 of the determination. He also noted that the treatment received by the respondent from Dr Eccles was free and that the respondent was living with his cousin who supports him financially. Mr Nasim also pointed out that in the letter of reasons for the decision, the appellant had not raised the issue of the consequences to the public purse where he allowed to remain. Mr Nasim asked that the appeal be dismissed.

8. In his brief closing submission Mr Duffy repeated that Judge Lal had failed to carry out the balancing exercise and for that reason his decision should be set aside.
9. I have given careful consideration to all the relevant documents including the reasons for refusal, the determination of the First Tier Tribunal, the grounds upon which permission was sought and granted as well as the oral submissions from Mr Duffy and Mr Nasim. As Judge Colyer stated in his decision giving permission to appeal, "Permission may be granted if I am satisfied that there may be a material error of law that may have made a material difference to the outcome of the original appeal. This could be due to adverse or irrational findings or a lack of findings on core issues as established in the case of R (Iran etc.) v SSHD [2005] EWCA civ 982", I respectfully agree. In my judgment the findings made by Judge Lal are neither unreasonable nor perverse and indeed it is not stated by the Secretary of State to be the case. I am satisfied that the Judge looked at all the evidence and applied the correct criteria in drawing his conclusions that the appellant qualifies to remain in the UK under the Immigration Rules as well as under Article 8 of the ECHR. Judge Lal referred to the five step approach enjoined by Lord Bingham in R v (Razgar) v SSHD [2004] UKHL 27 in paragraph 17 of his determination. He found that "there would be significant obstacles to the Appellant reintegration back into Sri Lanka" and that finding of his was well supported by the evidence presented to him. The Judge found that "he has no real ties with Sri Lanka as he has now been out of that country for 13 years and that because of the particular physical manifestation of his condition and length of time he has been away, he effectively has no family ties either. The Tribunal has no reason to doubt his evidence of social ostracisation in Sri Lanka even with his family. The Judge found the evidence of three witnesses "to be credible and compelling".
10. I dismiss this appeal and for reasons given above the decision of Judge Lal must stand.

K Drabu CBE  
Deputy Judge of the Upper Tribunal.  
23 January 2016