



**Upper Tribunal
(Immigration and Asylum Chamber)**
IA/20777/2014

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 14 March 2016**

**Decision & Reasons Promulgated
On 1 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**MR ARUMUGAM THILAGANATHAN
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance by or on behalf of the Appellant
For the Respondent: Mr D. Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Sri Lanka, born on 24 January 1968. He entered the United Kingdom unlawfully on 10 February 2010 and claimed asylum. This application was refused and his appeal against that decision was dismissed by Immigration Judge Horvath on 28 June 2010.

2. On 13 March 2014, the Appellant made an application for a residence card as confirmation of his right to reside in the United Kingdom as an extended family member of an EEA national under regulation 8 of the Immigration (EEA) Regulations 2006. The EEA national in question was his brother in law, a French national exercising treaty rights in the United Kingdom as a self-employed business person. This application was refused on 28 April 2014 and an appeal was lodged against this decision on 8 May 2014, which raised ground of appeal in respect of Articles 3 and 8 of ECHR
3. The appeal came before Judge of the First-tier Tribunal Wilson for hearing on 11 February 2015 and in a decision and reasons promulgated on 23 February 2015 he dismissed the appeal on the basis that he did not find that the Appellant was dependent upon his brother in law prior to entry into the United Kingdom [11] whilst he accepted that he is now living with him and forms part of his household [12]. The Judge held at [3] that he was not satisfied that an appeal under the EEA Regulations generated a sufficient basis for lodging a section 120 notice or for the grounds of appeal to be extended beyond those directly attacking the merits of otherwise of the decision under the EEA Regulations [3].
4. An application for permission to appeal was made to the Upper Tribunal on 9 March 2015 on the basis that the First tier Tribunal Judge erred in failing to permit the Appellant to appeal on asylum grounds as paragraphs 26(4) and (5) only permit exclusion of asylum and human rights grounds if those grounds have been certified by the SSHD and permission to appeal to the Court of Appeal had been granted on this point: TY (Sri Lanka) C5/2013/1110. No challenge to the findings of the First tier Tribunal Judge in respect of the EEA Regulations was made in the grounds of appeal.
5. Permission to appeal was granted by Designated First-tier Tribunal Judge Macdonald on 27 April 2015 on the basis that the grounds of appeal disclosed an arguable error of law.
6. The appeal first came before me on 10 September 2015 when the Appellant was represented by Ms S. Jegarajah of counsel. She stated that permission to appeal had been granted to the Court of Appeal in TY on 14 April 2014 and that the appeal was due to be heard on 3 and 4 November 2015. On that basis I agreed to adjourn the appeal to be listed for a case management review hearing in February 2016.
7. The appeal next came before me for a case management review hearing on 14 March 2016. There was no appearance by or on behalf of the Appellant, however, a letter dated 14 March 2016 came in later in the day from the Appellant's solicitors requesting

that the appeal be determined on the papers following the judgment in TY (Sri Lanka) [2015] EWCA Civ 1233.

8. In light of [27]-[35] of that judgment it is clear that the appeal cannot succeed as this Appellant's case is on all fours with that of the Appellant in TY. No section 120 notice was served on the Appellant and there was no duty upon the Respondent to serve a one stop notice under section 120 of the NIAA 2002. The position in relation to any asylum or human rights claim is as set out by the Respondent in the refusal decision of 28 April 2014 (and cited in identical terms by Lord Justice Jackson at [29] of TY: *"If you consider that you are entitled to remain in the UK on the basis of other Immigration legislation then please visit the UKBA website and submit the appropriate application for consideration."*

Notice of decision

9. It follows that there is no material error of law disclosed in the decision and reasons of First tier Tribunal Judge Wilson of 23 February 2015 and the appeal against that decision is dismissed.

Deputy Upper Tribunal Judge Chapman

16 March 2016