



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/48584/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 6<sup>th</sup> May 2016

Decision & Reasons Promulgated  
On 7<sup>th</sup> June 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

MISS KINTHUSHA RAJAGOPAL  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr S. Chelvan of Counsel  
For the Respondent: Mr S. Whitwell, Presenting Officer

**DECISION AND REASONS**

**The Appellant**

1. The Appellant is a citizen of Sri Lanka, born on 13<sup>th</sup> June 1990. She appealed against a decision of the Respondent dated 17<sup>th</sup> November 2014 which had refused her

application to vary leave to remain and to remove her by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. Her appeal was allowed at first instance by Judge of the First-tier Tribunal Colyer sitting at Nottingham on 3<sup>rd</sup> July 2015. The Respondent appealed that decision and following a hearing at Field House on 15<sup>th</sup> January 2016 I set aside the decision of Judge Colyer particularly insofar as it related to whether the Appellant could succeed under paragraph 276ADE(1) of the Immigration Rules. Judge Colyer had found that there were significant obstacles to the Appellant's reintegration into Sri Lanka. Annexed to this decision is my decision dated 11<sup>th</sup> February 2016 in which I found a material error of law in that decision and set it aside. The question was whether there were very significant obstacles which would prevent a return to Sri Lanka.

2. The Appellant lived in Sri Lanka until she was 16 years of age when she moved with her family to India where the family claimed asylum and were recognised as refugees. The Appellant's father came to the United Kingdom and made an application for asylum on 8<sup>th</sup> January 2008. He was granted refugee status on 14<sup>th</sup> August 2009. The Appellant lived in India for five years making an application to join her father in the United Kingdom in 2011. This application was refused but was allowed on appeal when the Appellant was granted entry clearance for two years valid from 16<sup>th</sup> April 2012 until 13<sup>th</sup> August 2014. The Appellant entered the United Kingdom on 21<sup>st</sup> September 2012 after her successful appeal. On 17<sup>th</sup> July 2014 the Appellant applied for leave to remain in the United Kingdom outside the Rules. It was the refusal of this application by the Respondent on 17<sup>th</sup> November 2014 that has given rise to the present proceedings.
3. At paragraph 28 of my earlier decision I noted the concession made by the Respondent that if further evidence was submitted the Respondent could look at the matter again and potentially make a fresh decision on whether the Appellant would face very significant obstacles upon return to Sri Lanka. On the other hand if no such further evidence was submitted to the Respondent or if the Respondent replied in the negative, then the matter would have to come back before the Upper Tribunal for the appeal to be concluded. Further submissions were made to the Respondent by letter dated 28<sup>th</sup> April 2016 which included extracts from the Operational Guidance Note for Sri Lanka dated July 2013. However they were not considered by the Respondent in time to make any difference to the hearing before me which had been fixed for 6<sup>th</sup> May 2016.

### **The Hearing Before Me**

4. Counsel for the Appellant indicated that the case would proceed by way of submissions only as he did not propose to call any oral testimony. Certain findings of fact made by the First-tier Tribunal determination of Judge Colyer were preserved. The Appellant's uncle and aunts had been displaced in Sri Lanka and there was no contact with them. The Appellant had no family members in India where she had travelled to from Sri Lanka aged 16 and had been accepted as a refugee. The Appellant had lived in India for five years. Although over 18 she was financially and emotionally dependent upon them. I pause to note here that I concluded at

paragraph 25 of my earlier decision that it was difficult to say that the Appellant was dependent on her family, if anything they were more dependent upon her, given that she was sending them half of her earnings each month. Furthermore as became apparent the Appellant's case was in fact that the family were dependent on her and not the other way around. She worked in a residential care home in Essex since 7<sup>th</sup> June 2013 working away from home in a shift pattern. She was no longer financially dependent on her family but pooled her finances with them. She was financially supporting her younger siblings who were in full-time education. She was unable to find work in Leicester and cared for vulnerable people in a care home. She was single, not in a relationship and had no children. All of her family save for her had indefinite leave to remain. On this point I commented at paragraph 26 of my error of law decision:

“The Appellant's position appears somewhat anomalous given that she alone of the family does not have indefinite leave to remain and it is difficult to see how her circumstances so sharply differ from the others such that she should not have indefinite leave to remain whilst the others do. Nevertheless the fact that the Appellant had two years' leave to remain granted to her did not mean that she had any form of legitimate expectation that her leave would be continued.”

5. The skeleton argument cited page 41 of the Immigration Directorate Instructions on Family Migration, Section 8.2.3.4 that the starting point was to assume that an applicant would be able to integrate into their country of return unless they could demonstrate why this was not the case. The focus was squarely with respect to conditions in the country of origin. There were three main headings to be addressed in the Respondent's policy: cultural background; length of time spent in Sri Lanka and family, friends and social network there. The Appellant was still a child with her immediate family when she left Sri Lanka at age 16. The Respondent could not depart from her own published policy guidance without good reason and the Operational Guidance Note was to be treated as the published policy position of the Respondent; see CMD [2010] UKUT 215. The Appellant had no family friends or social network in Sri Lanka. I pause to note here that it is not quite right. As I stated at paragraph 4 of my earlier decision, Judge Colyer had accepted that the Appellant and her family had fled Sri Lanka as refugees but “although there might be some extended family in that country there was no contact with any of them”.
6. Women as part of a particular social group could be granted refugee status as they constituted a risk group on account of gender-based violence without effective state protection or a viable internal relocation alternative. The Appellant was not highly educated or part of a social elite. Her work made her akin to a manual labour category for women as a care assistant. As she would be returning as a lone female without any family network in Sri Lanka there was a real likelihood that on the basis of the country evidence relied upon by the Respondent as a Tamil she could be the target of various forms of sexual assault. The Asian Development Bank had reported that sexual harassment of women was trivialised and there was a culture of acceptance around violence against women. Female returnees and internally displaced persons, and particularly female rehabilitees, were vulnerable facing social,

cultural and livelihood-related difficulties in connection with their resettlement. On a fact sensitive enquiry and in the light of the Respondent's own published policy position there would be very significant obstacles to the integration of the Appellant as a lone woman returning to Sri Lanka. The evidence showed a real risk of sexual assault with an acceptance by the Respondent in the 2013 Operational Guidance Note that successful asylum claims could succeed with this category of claims. The standard of proof in this case was the balance of probabilities.

7. In the case of **Miah [2016] UKUT 00131** it was stated that Immigration Directorate Instructions were ranked as a relevant consideration to be taken into account by decision makers in every case where they applied. The onus was on the applicant to show that there were very significant obstacles to that integration according to the IDIs. It was not on the decision maker to show that there were no such obstacles. The decision maker should expect to see original independent and verifiable documentary evidence of any claims made in this regard and must place less weight on assertions which were unsubstantiated. Very significant obstacles would exist where the applicant demonstrates that they would be unable to establish a private life in the country of return or where establishing a private life would entail very serious hardship for the applicant. The decision maker should consider whether the applicant has the ability to form an adequate private life by the standards of the country of return not by UK standards. An applicant who has family or friends in the country of return should be able to turn to them for support to help them to integrate into that country. Where there were no family friends or social networks in the country of return that was not in itself a very significant obstacle to integration. Lack of employment prospects was very unlikely to be a very significant obstacle to integration. The IDIs did not claim to be an exhaustive code. They did not have the status of law and thus were subservient to primary legislation, secondary legislation and the Immigration Rules.
8. Counsel argued that the starting point was where would the Appellant's home area be? The Appellant would be returning as a lone, single woman with no family support in Sri Lanka. If the Appellant could succeed in a protection claim then she would succeed under Article 8. The Appellant relied only on the Respondent's Operational Guidance Note but the Respondent could not challenge her own published policies. The Appellant was not part of the professional elite, she was not an activist, she was within the manual labour category of individuals. She feared sexual assault.
9. Counsel made further submissions on the contents of the Operational Guidance Note commencing at section 3.13 which stated that some women applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of Sri Lankan authorities on the grounds of gender-based persecution. Section 3.13.15 stated that where a Sri Lankan woman was able to show that she faced a real risk of gender-based violence amounting to torture or inhuman or degrading treatment and was unable or unwilling through fear to access protection and where internal relocation was unduly harsh a grant of refugee status would be appropriate as a member of a particular social group.

10. 3.13.6 stated that Tamil women and girls had historically been the targets of various forms of sexual assault following their arrest or detention at checkpoints. Such assaults were said to be justified on the grounds that they or their family members were suspected members of the Tamil insurgency. Widespread sexual violence and crime had also been a serious issue in interment camps during the conflict. At 3.13.8 the OGN cited the US State Department of Human Rights Practices Report 2012 that there were reports that individual cases of gender-based violence were perpetrated by members of the security forces which occurred in areas with heavy security force presence.
11. At 3.13.9 the organisation LandInfo was quoted having reported in December 2012 that a large proportion of households in the Northern Province were headed by women, in some areas as much as 30%. These households faced more multifaceted and larger socioeconomic and security problems than traditional households. There was, however, no evidence that the security forces were responsible for many cases of rape/sexual violence against women in female-led households in Vanni. There could, however, be under-reporting of sexual violence. At 3.13.13 the OGN stated that in general state protection was statutorily available to women, however, impunity within the police and security forces remained a serious problem.
12. At 3.13.14 the OGN stated:

“For some women in Sri Lanka relocation will not be unduly harsh but given the number of IDPs in the post-conflict environment this is only likely to be the case where the individual can access adequate support from family or from community members based in Sri Lanka or abroad or is able to support herself and/or any dependants. The UNHCR’s eligibility guidelines consider that Sri Lankan’s Northern region in particular is not likely to qualify as a reasonable relocation alternative for women”.
13. I raised with Counsel what the paragraph should be taken to mean when it referred to relocation not being unduly harsh where an individual could access adequate support from family abroad. Did this imply that if financial support was available to a female returning to Sri Lanka that would mean that relocation would not be unduly harsh? Counsel responded that money could not alleviate risk and that in any event the family were dependent on the Appellant, rather than the other way around. There were some categories of women who would be treated as refugees. The test in this case, however, was not whether the Appellant would be a refugee but whether there were very significant obstacles to her return to Sri Lanka.
14. In response the Presenting Officer stated that the Respondent’s position was as outlined at paragraph 17 of my earlier decision, namely that the Appellant had a right to apply for asylum and if the Appellant wished to take that issue further her solicitors could send additional material direct to the Presenting Officer. The Appellant had never claimed asylum in this country. The argument in this case, therefore, should be limited to whether the Appellant could show on the balance of probabilities that there were very significant obstacles. This was not a protection

claim. The Operational Guidance Note was more nuanced than Counsel's submissions led one to believe. The Respondent's position was not that an applicant, if a woman, got protection but rather for some women internal relocation might not be unduly harsh, for example because of adequate support from family members abroad. This was not a case where it could be said that the family members remaining in the United Kingdom would fail to support the Appellant in Sri Lanka.

15. As **Miah** had pointed out when quoting the Operational Guidance Notes lack of a network in Sri Lanka would not be a very significant obstacle. This Appellant was a 25 year old Sri Lankan Tamil who had lived in Sri Lanka for the first sixteen years of her life and could reintegrate back into Sri Lanka. The Appellant had a Bachelors Degree in Nursing according to her evidence and could speak a foreign language, English. She lived outside the family unit due to her work commitments in the South of England and taken with family support this would not amount to very significant obstacles or be unduly harsh.
16. In conclusion, Counsel stated that the Respondent's submission relied on the family providing finance to the Appellant when in fact they were dependent on her. They could not send money to her. The relevant paragraph in the Operational Guidance Note related to Tamils from the North. This Appellant was from Jaffna. The Appellant had not completed her qualification in India.

### **Findings**

17. The Appellant must show in this case pursuant to Paragraph 276ADE (vi) of the Immigration Rules that it is more likely than not she will face very significant obstacles to her reintegration back into Sri Lanka, a country where she was born and lived for the first sixteen years of her life before travelling with the rest of her family to India where the family claimed asylum. It is not suggested that the Appellant should be returned to India.
18. The Appellant does not have a profile such that she would invite the adverse attention of the authorities upon return to Sri Lanka in accordance with the country guidance authority of **GJ**. She has never been involved with any political organisation, nor has she ever been a journalist or taken part in any actions for the break-up of the Sri Lankan state. She has never come to the adverse attention of the authorities before and I see no reason why she would come to the adverse attention of the authorities now upon return. I was not presented with any argument that the circumstances of her father were such that the Appellant's name would be on any form of stop list or otherwise of interest to the authorities. The Appellant would be returning to Sri Lanka as a Sri Lankan citizen who had spent a number of years abroad, some of it with leave in the United Kingdom.
19. The Appellant's case is that the circumstances for lone females in Sri Lanka are such that she would thereby be at risk. The Operational Guidance Note does raise concerns that females who come to the adverse attention of the Sri Lankan authorities might be abused by individuals in the Sri Lankan forces etc. However, there is no reason why this Appellant would come to the adverse attention of the

authorities and to suggest that there is a risk that she might nevertheless have the misfortune to be caught up in some action or other of the authorities would in my view be speculative. The Appellant has no profile of any description and there is no justification for saying, therefore, that she would come to the attention of the authorities by accident or design. The position is that the Appellant would return as a single female to a country she left nine years ago where she says she has no family or other supportive network. The Respondent's Operational Guidance Notes indicate that that is not to be taken as a significant factor.

20. The Appellant has shown herself to be resourceful and able to find employment and to live away from home whilst engaging in that employment. I accept that the Appellant pools her finances with the rest of her family and that the family have benefited from the money which the Appellant has given to them. The Appellant's case is that she could not expect to receive financial support from her family in the United Kingdom because they would be significantly worse off without the money that she earns. That is an important argument but it assumes that the Appellant would be quite unable herself to find employment in her country of origin where she speaks the language and could return to her home area where she originated from or elsewhere in her country of origin if she did not wish to return to the Jaffna area. That she has been able to find employment in a completely different country to Sri Lanka indicates that she would be up to the task of finding employment in her country of origin.
21. As the statistics show a very large number of households in Sri Lanka are headed by females. It cannot be said, therefore, that merely being a lone female in Sri Lanka of itself is a very significant obstacle to a return to that country. Whether it would be possible for the Appellant to re-establish contact with those members of her family still in Sri Lanka is not for me to speculate on, the case is proceeding on the basis that the Appellant could not, but it does not seem to me to be a very significant obstacle for a 25 year old woman to return to her country of origin and live her life there. If the Appellant had some form of political profile that would run the risk of bringing her to the adverse attention of the authorities, the position might be different but that is not the case here, that is not the evidence which I have heard. I agree with the submission of the Respondent that the OGN is somewhat more nuanced than was suggested by Counsel for the Appellant. There may be cases where women as a particular social group who would face gender-based violence would be entitled to a grant of asylum in this country. That, however, is not the case here. The Appellant's claim to fear violence as a lone female returning to Sri Lanka is somewhat vague. The Appellant cannot say she fears such violence from the rogue elements in the authorities as she has no particular profile that would attract adverse attention in the first place. A risk of violence exists sadly in any society in the world. The question is whether there are factors in the Appellant's case that would mean that she could show that on the balance of probabilities there would be very significant obstacles. I do not accept that the Appellant can show that it is more likely than not that she would face gender-based violence upon return. If the Appellant wishes to argue to the lower standard there is a real risk of such harm then the Appellant's remedy is to apply for asylum in the usual way. This the Appellant has not done.

22. Whilst I have some sympathy for the position that the Appellant finds herself in, particularly given the fact that she was granted different leave to the rest of her family and that she has sought to work and make a contribution to UK society, my focus in this case is a narrow one. It is whether the Appellant can show that there are very significant obstacles to her return to Sri Lanka. I find that she cannot.
23. As I indicated at paragraph 24 of my earlier decision the Appellant's claim to have a private life was a relatively weak one given that she had limited leave to remain and her status was precarious. She had no legitimate expectation that her leave to remain would be extended at the end of the two year period granted to her following her successful entry clearance appeal before Judge Bell. Under Section 117B of the 2002 Act, little weight could be attached to the Appellant's private life in the event that the assessment under Article 8 reached the proportionality stage. With only little weight being attached on the Appellant's side of the balance it was difficult to see how that could outweigh the public interest in immigration control. The Appellant's claim to a private life failed as I indicated previously in my error of law decision and for the reasons which I have given the Appellant's claim to a family life also failed. I was not addressed on either of those two points.
24. If the Appellant has any evidence to show that she would be at risk of inhuman or degrading treatment upon return to Sri Lanka it would still be open to the Appellant to make such a claim. As was pointed out during the hearing this was not a protection claim appeal. It was an appeal under the Immigration Rules and it does not succeed for the reasons which I have set out above. It would be difficult on the basis of the information I have to come to the view that there was a real risk that the Appellant would suffer such ill-treatment upon return.

**Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error of law and I have set it aside. I re-make the decision by dismissing the Appellant's appeal against the Respondent's decision to refuse to grant leave.

I make no anonymity order as there is no public policy reason for so doing.

Signed this 6th day of June 2016

.....  
Deputy Upper Tribunal Judge Woodcraft

**TO THE RESPONDENT**

**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed this 6th day of June 2016

.....  
Deputy Upper Tribunal Judge Woodcraft





IAC-HW-AM-VI

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

Appeal Number: IA/48584/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15<sup>th</sup> January 2016**

**Decision & Reasons Promulgated**

.....

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT**

**Between**

**MISS KINTHUSHA RAJAGOPAL  
(ANONYMITY ORDER NOT MADE)**

**Appellant**

**and**

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

**Respondent**

**Representation:**

For the Appellant: Ms J. Rothwell of Counsel  
For the Respondent: Mr I. Jarvis, Home Office Presenting Officer

**DECISION AND REASONS**

**The Appellant**

1. The Appellant is a citizen of Sri Lanka born on 13<sup>th</sup> June 1990. She appealed against a decision of the Respondent dated 17<sup>th</sup> November 2014 which had refused her

application to vary leave to remain and to remove her by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. Her appeal was allowed at first instance by Judge of the First-tier Tribunal Colyer sitting at Nottingham on 3<sup>rd</sup> July 2015. The Respondent appeals with leave against that decision. Although this matter came before me as an appeal by the Respondent for the sake of convenience I will continue to refer to the parties as they were known at first instance.

2. The Appellant lived in Sri Lanka until she was 16 years of age when she moved with her family to India where the family claimed asylum and were recognised as refugees. The Appellant's father came to the United Kingdom and made an application for asylum on 8<sup>th</sup> January 2008. He was granted refugee status on 14<sup>th</sup> August 2009. The Appellant lived in India for five years making an application to join her father in the United Kingdom in 2011. This application was refused but was allowed on appeal when the Appellant was granted entry clearance for two years valid from 16<sup>th</sup> April 2012 until 13<sup>th</sup> August 2014. The Appellant entered the United Kingdom on 21<sup>st</sup> September 2012 after her successful appeal. On 17<sup>th</sup> July 2014 the Appellant applied for leave to remain in the United Kingdom outside the Rules. It was the refusal of this application by the Respondent on 17<sup>th</sup> November 2014 that has given rise to the present proceedings.

### **The Hearing at First Instance**

3. At the hearing before Judge Colyer the Appellant gave evidence and stated that she was working for an agency as a care assistant. Her net monthly pay was approximately £1,000. She sent money to her family who lived in the Leicester area and used some of her money to pay her rent and save for her studies. She was not married and had no children. According to her father she was sending £500 to £600 per month to the family. The Judge was satisfied that there was family life between the Appellant and her parents and siblings which would be disproportionately interfered with by the Appellant's removal. All of the Appellant's immediate family were in the United Kingdom her father, her mother, her brother and three sisters. The Appellant's parents and siblings all had indefinite leave to remain. Although the Appellant was no longer financially dependent upon her parents there was a system of family finance in that they pooled their finances together to help each other. The Appellant still considered her family house in Leicester as her home. She was emotionally and morally dependent upon her parents.
4. The Judge accepted that the Appellant and her family had fled Sri Lanka as refugees. Although there might be some extended family in that country there was no contact with any of them. Under paragraph 276ADE(1)(iii) and (vi) of the Immigration Rules where an applicant is 18 years or above and has lived continuously in the United Kingdom for less than twenty years such a person must show very significant obstacles to their integration into the country to which they would have to go if required to leave the United Kingdom. The significant obstacles to the Appellant's integration in Sri Lanka were that she had left the country in order to claim refugee status in India where she and her family were recognised as refugees. She was a

Tamil and there would be concerns for her safety if she returned to Sri Lanka because of her Tamil origin. She had no immediate family and no home she could rely on.

5. The Immigration Directorate Instructions defined the phrase “very significant obstacles to integration”. A very significant obstacle was something which would prevent or seriously inhibit the applicant from integrating into their country of return. The fact that an applicant may find life difficult or challenging in the country of return did not mean that there would be very significant obstacles. At paragraph 49 the Judge found that the Appellant had demonstrated to the standard required that there would be very significant obstacles to her integration into Sri Lanka.
6. The Judge went on to consider Article 8 of the European Convention on Human Rights (right to respect for private and family life). After directing herself on case law the Judge found that the Appellant established on the balance of probabilities that significant family life existed between her, her parents and her siblings. She found that this family life was influenced by the Appellant’s cultural background and circumstances. It was exceptional in that the Appellant was an adult and although no longer financially dependent upon her parents the family were now partially financially dependent upon the Appellant. Although the Appellant worked away from the family home she considered her parents’ house to be her home and it was only the requirement of employment that had caused her to spend some time away from the family home. During the Appellant’s time in the United Kingdom she had developed a considerable private life and significant friendships. The decision to remove would have a significant effect upon her continuing employment and education and would disrupt her career progression. Directing herself on the step-by-step approach required by the case of Razgar [2004] UKHL 27 the Judge found that the weight to be attributed to the public interest was outweighed in this particular case by the cumulative weight established by the Appellant through her private and family life in the United Kingdom. She allowed the appeal.

### **The Onward Appeal**

7. The Respondent appealed against that decision arguing that the Judge’s finding of very significant obstacles to the Appellant’s reintegration were no more than unreasoned generalisations with no reference to the actual facts or background evidence. Whilst the Appellant might in the past have been granted some sort of refugee status in India there was no engagement by the Judge as to why this would now be an obstacle to reintegration to Sri Lanka or why as a female Tamil reintegration would be difficult. In any event the Judge had set out the test as very significant obstacles but then referred to merely significant obstacles.
8. The Judge had found a family life between the Appellant and her parents and her siblings. The Appellant was 25 years old and only spent weekends at the family home. The Judge had failed to identify what it was about this relationship that amounted to more than normal emotional ties between the Appellant as an adult and other family members. The Judge had found the Appellant had established a private life but given that the Appellant had only been here for three years the strength of

any private life would be limited. Following the case of **AM Malawi [2015] UKUT 0260** the Appellant could obtain no positive right to a grant of leave to remain from either Section 117B(3) or (3) of the Nationality, Immigration and Asylum Act 2002 whatever the degree of her fluency in English or the strength of her financial resources.

9. The application for permission to appeal came on the papers before First-tier Tribunal Judge Holmes on 6<sup>th</sup> November 2015. In granting permission to appeal he wrote that if the Appellant succeeded under the Immigration Rules there was no need for the Judge to go on and consider or allow an Article 8 appeal. In fact it was arguable that both decisions of the Judge under the Immigration Rules and Article 8 were flawed. It was arguable that the Judge had failed to consider and apply the tests set out in **Agyarko** [which relates to the meaning of insurmountable obstacles] and **SS Congo** [that compelling reasons must be shown for an appeal to be allowed outside the Rules]. The Judge simply accepted that there was family life for the purpose of Article 8 without analysing what the true relationship between the adult Appellant and her adult relatives in the UK consisted of particularly given that the Judge appeared to have accepted that the Appellant was living an independent life.
10. Judge Holmes concluded:

“Arguably at the heart of this appeal was the disputed issue of fact as to whether the Appellant was herself genuinely a refugee from Sri Lanka at the date of the hearing and this issue was simply never addressed by the Judge. If she was not then this should arguably have been the context in which the Judge approached paragraph 276ADE and Sections 117A to D and the guidance to be found in **AM Malawi**. Overall it is arguable that the decision displays a flawed approach to the issue of the proportionality of the removal and a failure to adequately apply existing jurisprudence. All of the grounds may be argued.”

11. Following the grant of permission to appeal the Appellant filed a Rule 24 response drafted by Counsel who appeared before me. The reply noted the successful appeal before Judge Bell in January 2012 (as a result of which the Appellant was granted two years leave to remain) and the reasons given for allowing that appeal. There were a number of findings of fact which appeared not to have been challenged. The Appellant had no family members in India. She went to India when she was age 16 and was accepted as a refugee and lived there for five years. She was part of her parents’ pre-existing family and although over 18 was financially and emotionally dependent upon them. She would be considered part of the immediate family until marriage.
12. The Appellant had worked in a residential care home in Essex since 7<sup>th</sup> June 2013 living away from home when working shifts and returning to the family home in Leicester when she was not working. All of her family lived together save for her elder sister who was married with a child. She was no longer financially dependent on her family but lived in a joint financial family system as they pooled their resources together. She was financially supporting her younger siblings who were in

full-time education. She was unable to find work in Leicester. The family had no assets and had lost ties to Sri Lanka. The findings of Judge Colyer were fully reasoned and there was no error of law. The question of whether there would be significant obstacles to the Appellant's integration into Sri Lanka did not appear to have been an issue that was argued by the Respondent at the appeal hearing although it was raised in the Appellant's original grounds of appeal. There were no errors in the Judge's consideration of Article 8.

### **The Hearing before Me**

13. For the Respondent it was argued that the Tribunal had found in 2012 that there was a relationship which deserved respect under Article 8 but since the Appellant had entered the United Kingdom she had lived her own life and therefore there was no justification for allowing this appeal under Article 8.
14. For the Appellant it was noted that the Entry Clearance Officer had granted leave to enter to the Appellant's siblings who now had indefinite leave to remain. It may be that the Respondent thought that the Appellant had lived in Sri Lanka for 22 years rather than that the Appellant had had to leave Sri Lanka with her family to go to live in India. The Appellant although an adult, was in a similar position to a child or young person still dependent on their parents.
15. In reply for the Respondent it was argued that there was no evidence that the Appellant would face very significant obstacles as a lone female. The test was not whether the Appellant could have a private life in the United Kingdom but whether she was able to have a private life in her country of return. This was not an asylum claim and the risk to life was not being pursued by the Appellant. The issue of the Appellant's refugee status in India was something of a red herring. The Appellant was not being supported by her family. The Judge needed to do more than say that the Appellant believed herself to be part of the family in order to succeed. The grant of two year leave to remain meant that the Appellant's status was precarious.
16. For the Appellant Counsel conceded that there were criticisms to be made of the Judge's determination but there was no material error of law. The Appellant had raised the issue of refugee status, she was a refugee in India. She could not be removed to Sri Lanka. It would be disproportionate to remove the Appellant to India. She was granted leave in line with her father or should have been when she came. The Appellant still went home to the family house in Leicester; there was an emotional dependency on the parents. Little weight to be given to a private life was not the same as saying no weight. The grant of asylum in another country was something which went to the issue of very significant obstacles. If the most important issue in the case was whether the Appellant could return to Sri Lanka having fled there with her family, that issue should be more fully dealt with by the Respondent upon proper consideration.
17. In conclusion the Presenting Officer argued that the Appellant had a right to apply for asylum. It was not clear why the Appellant had been granted refugee status in India, she might have been granted that because she was a child. If the Appellant

wished to take that issue further her solicitors could send additional material direct to the Presenting Officer to be considered. There should be a substantive rehearing.

### Findings

18. The Appellant entered the United Kingdom with two years' leave to enter following a successful appeal before Judge Bell. During that two years the Appellant has obtained gainful employment, continues to exhibit a strong bond between herself and her family notwithstanding that her employment is in Essex and she returns to the family home when she is not working shifts.
19. Judge Colyer allowed this appeal under both the Immigration Rules and outside the Rules under Article 8. As Judge Holmes pointed out once the appeal was allowed under the Immigration Rules there was no need for the Judge to go on to consider the matter outside the Rules. Indeed it would be difficult to do so since if one is to decide an appeal outside the Rules one has to weigh in the balance the fact that the Appellant cannot succeed under the Rules. The Judge did not do this when considering proportionality.
20. For the Appellant to succeed under the Immigration Rules she must show that she comes within paragraph 276ADE and given that she cannot show she has lived in this country for more than twenty years, she must show that there are very significant obstacles to her reintegration back into life in India.
21. This issue was touched upon in the Judge's determination at paragraphs 38 to 41 (see paragraph 4 above). It does not appear that the Respondent intends to return the Appellant to India a country with which the Appellant has little or no connections now. Rather it would be the Respondent's intention to remove the Appellant to Sri Lanka and the issue therefore is whether there are very significant obstacles to that course. At paragraph 41 of the determination the Judge found that there were such obstacles because the Appellant had left Sri Lanka in order to claim refugee status in India where she and her family were recognised as refugees. She was a Tamil and there would be concerns for the Appellant's safety if she returned to Sri Lanka because of her Tamil origin and because she would be alone, a female without protection of a male or family. She had no immediate family and no home that she could rely upon.
22. I understand the Respondent's concern with that paragraph (paragraph 41) of the determination given the paucity of evidence upon which that paragraph was based. The Judge appeared to accept that because the Appellant was recognised as a refugee that of itself would cause difficulties to the Appellant upon return. There needed to be much more evidence to indicate that the family member of a recognised refugee (who had herself been granted protection in India) would thereby be at risk upon return to Sri Lanka. It does not appear that that evidence was before the Judge and to that extent there was a clear error of law in the Judge's finding of very significant obstacles. Even if the Judge was entitled to find that the Appellant would return alone to Sri Lanka that of itself does not mean that the Appellant would face very

significant obstacles to her reintegration into a country in which she spoke the language.

23. The Appellant had a history of working in the United Kingdom and without some evidence, there could not be an assumption that the Appellant would be unable to find work in Sri Lanka. The Judge appeared to come close to saying that merely as a Tamil the Appellant would be at risk but that is not in accordance with the country guidance case of GJ. I find that the Judge was wrong to conclude on the evidence before him that there were significant obstacles to the Appellant's integration in Sri Lanka. There was thus a material error of law in finding that the Appellant came within paragraph 276ADE(1).
24. That meant that the Appellant's claim to remain in this country had to be considered under Article 8 outside the Rules bearing in mind that the Appellant could not succeed under the Rules. The Judge did not do that. The Appellant's claim to have a private life was a relatively weak one given that she had limited leave to remain and her status was precarious. She had no legitimate expectation that her leave to remain would be extended at the end of the two year period granted to her following her successful appeal before Judge Bell. As such therefore under Section 117B, at the proportionality stage little weight could be given to the Appellant's established private life. Whilst I appreciate that little weight is not the same as no weight, little weight must mean what it says and it is difficult to see how in the circumstances of this case someone with only little weight on their side of the balance can outweigh the public interest in immigration control. The Judge thus made a material error of law in allowing the appeal outside the Rules in relation to private life.
25. The issue in relation to family life is perhaps more complex. The Appellant has a family life between herself and her parents and adult siblings all of whom have been granted indefinite leave to remain. That family life will be interfered with by removing the Appellant to Sri Lanka but the interference will be in accordance with the legitimate aim of immigration control since the Appellant only had limited leave to be here and that limited leave has now expired. The Appellant only has 3C leave at the present time. It is difficult to say that the Appellant is dependent on her family, if anything they are more dependent upon her given that she is sending them half of her earnings each month.
26. The Appellant's position appears somewhat anomalous given that she alone of the family does not have indefinite leave to remain and it difficult to see how her circumstances so sharply differ from the others such that she should not have indefinite leave to remain whilst the others do. Nevertheless the fact that the Appellant had two years' leave to remain granted to her did not mean that she had any form of legitimate expectation that her leave would be continued. Family life would be interfered with by requiring her to return to Sri Lanka but the family relationship is one of adults without significant ties of dependency. The Appellant's father works and it is difficult to see how the family is therefore so dependent on the money from the Appellant that they would face difficulties if she were to return. The Appellant's removal would be proportionate to the legitimate aim being pursued.

27. There are material errors in the decision of the Judge to allow this appeal both within the Immigration Rules and outside the Rules. I do not however go on at this point to dismiss the appeal. This is because there remains outstanding the question of whether the Appellant can be expected to return to Sri Lanka a country from which her family fled when she was 16. If the Appellant can show to the lower standard applicable in asylum and Article 3 cases that there are real reasons for believing that she would be at risk upon return then this would indeed create the very significant obstacles required by paragraph 276ADE. I accept the point made by Counsel for the Appellant that this issue has not been properly considered. The Appellant needs to provide more evidence of why she cannot be expected to return to Sri Lanka and what the very significant obstacles in this case are. I am therefore setting aside the decision of the First-tier and giving directions for the matter to be reheard at a later date in the Upper Tribunal before me. I do not consider it necessary to remit this case back to the First-tier Tribunal since a substantial amount of evidence has already been given and what is outstanding now is one discreet point on whether the Appellant can satisfy the test of very significant obstacles to her reintegration into Sri Lanka.
28. The Presenting Officer very fairly indicated during the course of the hearing before me that if further evidence was submitted to the Respondent (he suggested directly to himself) then the Respondent could look at the matter again and potentially make a fresh decision on the issue of whether the Appellant face very significant obstacles. I would commend that as a sensible course but if after the Appellant has submitted further evidence the Respondent either does not reply to that further evidence or replies in the negative then the matter must come back before the Upper Tribunal for this appeal to be concluded. I therefore direct that this appeal should be reheard on the first available date after 15<sup>th</sup> April 2016. The Appellant should file and serve any further evidence on the issue of insurmountable obstacles no later than fourteen days before the resumed hearing.

**Notice of Decision**

The decision of the First-tier Tribunal involved the making of a material error of law and I have set it aside. I direct that the appeal be reheard on the first available date after 15<sup>th</sup> April 2016 before me.

The Appellant should file and serve any further evidence on which she proposes to rely in relation to the issue of her return to Sri Lanka no later than fourteen days before the resumed hearing.

I make no anonymity order as there is no public policy reason for so doing.

Signed this 11th day of February 2016

.....  
Deputy Upper Tribunal Judge Woodcraft



**TO THE RESPONDENT**  
**FEE AWARD**

As I have set the determination of the First-tier Tribunal aside I set aside the decision to make a whole fee award.

Signed this 11th day of February 2016

.....  
Deputy Upper Tribunal Judge Woodcraft